80-1035

No. .....

Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1980

J.C. REDD, Et Al.,
Petitioners,

vs.

A.C. LAMBERT, Chairman, State Tax Commission of the State of Mississippi, Et Al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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QUESTION PRESENTED

In a statewide property tax equalization class action under 42 U.S.C. §1983 brought in a state court of otherwise competent jurisdiction, does the Federal Tax Anti-Injunction Act, 28 U.S.C. §1341, preclude (a) the jurisdiction of the state court or (b) the availability of the Section 1983 remedy in state court?

QUESTION PRESENTED IN RELATED CASE NOW AWAITING DECISION

In *Rosewell v. LaSalle National Bank,* No. 79-1157, ... U.S. ....., 100 S. Ct. 1310, 63 L.Ed.2d 758 (1980) certiorari has been granted. Oral argument was held on November 10, 1980. 49 Law Week 3368. The question there presented is

> Are remedies that may be had by real estate taxpayer in courts of Illinois, *including state civil rights action premised on 42 U.S.C. §1983,* or statutory refund without interest, "plain, speedy and efficient" within meaning of 28 U.S.C. §1341 so as to bar federal injunctive relief from alleged overassessment that is claimed to violate taxpayer's civil rights? 49 Law Week 3100. [Emphasis supplied]

Rosewell assumes the answer to the question presented here. Other federal courts have made a like assumption. See pages 13-14 *infra.* But that question - is the Section 1983 remedy available to a discriminated against taxpayer suing in state court? - has never been answered by this Court.

In a sense, this case presents the other side of the *Rosewell* coin? What happens if the taxpayer is relegated to state court? That question needs an authoritative answer. This case presents an appropriate vehicle for giving such an answer.

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No. .....

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

J.C. Redd, Et Al., Petitioners herein, respectfully pray issuance of a writ of certiorari to the Supreme Court of Mississippi, to review the decision of that Court filed August 20, 1980 *sub nom. State Tax Commission v. Fondren,* 387 So.2d 712, 722-723 (Miss. 1980), on which rehearing was denied on September 24, 1980.

The review sought here is limited to that portion of the opinion below which held the trial court had no jurisdiction over Petitioners' Section 1983 claims and, accordingly, had no power to order reimbursement of attorneys fees and legal expenses under 42 U.S.C. §1988. On the authority of 28 U.S.C. §1341, a statute limiting federal court jurisdiction, the Supreme Court of Mississippi held

> Obviously this action could not have been brought in federal court under section 1983 because there is a plain, speedy and efficient remedy in Mississippi courts. . . .
>
> **We conclude the section 1983 cause of action must fail in state court because it would have failed if it had been filed first in federal court. . . .** 387 So.2d at 723, Appendix A, p. A24. (Emphasis supplied).

In so holding the Mississippi court reversed the order entered by the trial judge that Petitioners be reimbursed their reasonable attorneys fees. On the facts and in exercise of his discretion, the trial judge had stated

> "If ever there was a case in which attorneys fees should be provided, it is in the case at bar."[1] Appendix D, p. A51.

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1. In Mississippi, the Chancery Court has jurisdiction over domestic relations, family law, estate and guardianship matters. Allowance of attorneys fees in a variety of contexts is a part of the daily diet of every Chancery Judge in Mississippi.

OPINIONS BELOW[2]

Petitioners[3] brought this statewide property tax equalization class action under 42 U.S.C. §1983, *inter alia*, seeking injunctive relief only. The opinions below are:

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2. This section includes a description of the official and unofficial reports of all opinions delivered in the courts below, as required by Rule 21.1(d).

3. Pursuant to Rule 21.1(b) Petitioners list all parties to these proceedings.

(1) Petitioners here, Complainants-Taxpayers below, are

(a) J.C. Redd, an adult resident citizen of Hinds County, Mississippi;

(b) Claude E. Ramsay, an adult resident citizen of Hinds County, Mississippi;

(c) Henry Eugene Damon, an adult resident citizen of Lauderdale County, Mississippi;

(d) Edward L. Lowe, Sr., an adult resident citizen of Jackson County, Mississippi;

(e) Robert H. Dillon, an adult resident citizen of Adams County, Mississippi;

(f) Peter J. Pikul, an adult resident citizen of Warren County, Mississippi;

(g) W.M. Beasley, an adult resident citizen of Lee County, Mississippi;

(h) Raymond D. Magallanes, an adult resident citizen of Harrison County, Mississippi;

(i) Alexander Scott, Jr., an adult resident citizen of Leflore County, Mississippi;

(j) Charles Edwin Rea, an adult resident citizen of Lauderdale County, Mississippi;

(k) The R.W. Reed Company, a Mississippi corporation, domiciled in Lee County, Mississippi;

(l) STS, Ltd., a Mississippi corporation, domiciled in Washington County, Mississippi;

(m) Retzer and Retzer, Inc., a Mississippi corporation, domiciled in Washington County, Mississippi;

(n) Associated Developers, Inc., a Mississippi corporation, domiciled in Lee County, Mississippi;

(2) Respondents here, Defendants below, are

(a) the State Tax Commission for the State of Mississippi;

(Continued on following page)

(1) On January 5, 1979, Chancery Judge James Arden Barnett of the Chancery Court of Hinds County, Mississippi,[4] released his Memorandum Opinion disposing of and adjudicating the merits of Petitioners' claims for relief, including the Fourteenth Amendment/Section 1983 claims. This opinion is unreported. It is reproduced here as Appendix C.

(2) On April 4, 1979, the trial court released its Supplemental Opinion which, on the authority of 42 U.S.C. §1988, makes the award of attorneys fees to Petitioners and against Respondents in the amount of $58,000. This

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Footnote continued—

(b) Charles R. Brady, Chairman, State Tax Commission, and A.C. Lambert, his successor in office, effective July 1, 1980;

(c) Robert L. Vaughan, Commissioner, State Tax Commission, and E. Latrelle Ashley, his successor in office, effective July 1, 1978;

(d) Robert A. Baggett, Commissioner, State Tax Commission;

(e) Hurst L. Webb, Chief, Ad Valorem Division, State Tax Commission, and Allen I. Bissell, his successor in office, effective January 1, 1978;

(f) Guy Blankinship, Chief, Equalization Division, State Tax Commission.

Petitioners understand that Mr. Blankinship is no longer associated with the State Tax Commission.

The action instituted by J.C. Redd, Et Al., was designated as No. 105,132 on the docket of the Chancery Court of Hinds County, Mississippi. That action was consolidated with a related action, *Louis Fondren, Et Al. v. State Tax Commission, Et Al.*, No. 96,159 on the docket of the Chancery Court for all purposes including trial. The two cases were docketed in the Supreme Court of Mississippi as a single appeal, hearing Docket No. 52,018. The §1983 and §1988 issues involved in this Petition for Certiorari, however, were raised only in the *Redd* case, No. 105,131 in the trial court. The *Fondren* case is in no way involved in this petition for certiorari; only the *Redd* case.

4. The Chancery Court of Hinds County was the state court of competent jurisdiction to hear and adjudicate Petitioners' claims. *Fondren v. State Tax Commission*, 350 So.2d 1329 (Miss. 1977). For convenience the Chancery Court is hereinafter referred to as "the trial court".

opinion is likewise unreported. It is reproduced here as Appendix D.

(3) On May 9, 1979, the trial court entered its Final Decree implementing the decisions contained in the original Memorandum Opinion of January 5, and the Supplemental Opinion of April 4, including the award of attorneys fees. This decree is unreported and is reproduced here as Appendix E.

(4) On August 20, 1980, the Supreme Court of Mississippi[5] released its Opinion affirming in substance the Final Decree of the trial (on state grounds only) but reversing the relief granted under Section 1983 and the award of attorneys fees. This opinion is reported *sub nom. State Tax Commission v. Fondren,* 387 So.2d 712 (Miss. 1980). It is reproduced here as Appendix A.

(5) On September 24, 1980, the Supreme Court of Mississippi entered its Order denying Petitioners' Petition for Rehearing on the attorneys fees issue. There is no published notation of this denial of rehearing except that which appears *sub nom. State Tax Commission v. Fondren,* 387 So.2d 712 (Miss. 1980). That order is reproduced here as Appendix B.

JURISDICTION

This Court has jurisdiction to review the order of the Supreme Court of Mississippi entered September 24, 1980, denying rehearing via certiorari pursuant to the provisions of 28 U.S.C. §1257(3).

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5. Mississippi has no intermediate court of appeals. The Respondents appealed the trial court's decree directly to the Supreme Court of Mississippi.

CONSTITUTIONAL PROVISIONS INVOLVED

(1) *The Supremacy Clause*: Constitution of the United States, Article VI, ¶2. (See Appendix F).

(2) *The Equal Protection Clause*: Constitution of the United States, Amendment XIV, Section 1. (See Appendix F).

STATUTES INVOLVED

(1) *Federal Tax Anti-Injunction Act of 1937*: Title 28, U.S.C. §1341. (See Appendix F).

(2) *Civil Rights Act of 1871*: Title 42, U.S.C. §1983. (See Appendix F).

(3) *Civil Rights Attorneys Fees Award Act of 1976*: Title 42, U.S.C. §1988. (See Appendix F).

STATEMENT OF THE CASE

I. Introduction

On the merits of this politically sensitive statewide property tax equalization class action, the trial judge stated

> the evidence [of property assessment discrimination throughout Mississippi] is staggering and shocking to the senses. Appendix C, p. A34.
>
> * * *
>
> I have never seen any case before me which has been more thoroughly prepared or one in which the allegations were more completely proved. Appendix C, p. A42.

On the issue of the reimbursement of attorneys fees under 42 U.S.C. §1988,[6] the trial judge stated

> There is no doubt in the mind of this court that if there ever was a case in which attorneys fees should be provided, it is the case at bar. Appendix D, p. A57.

The issues presented for review here are issues of legal power, not of proof.

II. Petitioners' Federal Claims Were Presented at All Stages of the Proceedings Below

From the outset of this case, Petitioners asserted claims that the rampant and long standing property tax discrimination in Mississippi violated their rights protected by the Equal Protection Clause. Petitioners sued under 42 U.S.C. §1983.[7] Based on the "overwhelming" evidence, the trial judge held

> Complainants [Petitioners here] have established that their right to equal protection, under the Fourteenth Amendment of the United States Constitution, has been violated . . . . Appendix C, p. A36.

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6. In their original Bill of Complaint filed November 4, 1977 in the Chancery Court of Hinds County, Mississippi, Petitioners (Complainants/Taxpayers there) asserted a cause of action under 42 U.S.C. §1983 and prayed, if they should be the prevailing parties, for reimbursement of their attorneys fees and other legal expenses under 42 U.S.C. §1988.

7. In this action, Petitioners alleged and went to trial on a myriad of issues and legal theories. Generally speaking, these may be placed in three groupings:

(a) Federal claims arising under the Equal Protection Clause and litigated under Section 1983;

(b) State claims for violations of the Uniformity and Equality Clause, Section 112 of the Mississippi Constitution of 1890; and

(c) State claims based on violations of numerous Mississippi statutes regarding ad valorem taxation.

III. Reasons Why the Trial Judge Awarded Attorneys Fees

The Respondents, the State Tax Commission, Et Al., resisted mightily at all stages of the state court proceedings. Not only did Respondents defend on the merits, they raised every conceivable procedural objection and roadblock. In a marathon three week trial, Petitioners were needlessly forced to call as live witnesses over 70 of Mississippi's county tax assessors - to testify to what everyone already knew the facts to be. In the context of this massive resistance, on April 4, 1979, the trial judge ordered Respondents to reimburse Petitioners for a little over one-half of the legal expenses and attorneys fees incurred by them through the trial court proceedings.

Articulating the policy behind the Civil Rights Attorneys Fee Award Act of 1976, 42 U.S.C. §1988, the trial judge, who literally lived with this case the better part of a year, including the three week trial and many pre-trial and post-trial hearings, stated

> It does not seem right that it should be necessary for individual citizen taxpayers to have to foot the bill for suits to be filed requiring the taxing authority of the State to obey the provisions of the Constitution and State laws. Appendix D, p. A57.
>
> * * *
>
> It does not seem equitable if there is a way to prevent such inequity, to require that all this expense be borne by those public spirited taxpayers representing the class. Appendix D, p. A57.

The trial judge then did equity by sustaining Petitioners' claims under Section 1983 and awarding attorneys fees under Section 1988.

IV. The Trial Judge's Final Decree

By final decree entered May 9, 1979, the Chancery Court of Hinds County, Mississippi, implementing the decision made in the aforesaid Supplemental Opinion, ordered Respondents to reimburse Petitioners the amount of $58,000 for their reasonable attorneys fees and legal expenses.

V. The Federal Question Raised Here Was Encompassed in Error Assigned by Respondents on the State Appeal

On appeal to the Supreme Court of Mississippi, the members of the State Tax Commission, Respondents here, assigned as error the aforesaid decree for reimbursement of attorneys fees and legal expenses.

VI. The Federal Question Raised Here Was Decided by the Supreme Court of Mississippi

In its opinion released August 20, 1980, the Supreme Court of Mississippi, on the authority of 28 U.S.C. §1341, reversed Petitioners' victory on their Section 1983/Equal Protection claims and set aside the decree for reimbursement of attorneys fees and legal expenses. *State Tax Commission v. Fondren,* 387 So.2d 712, 722-723 (Miss. 1980).[8]

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8. The federal question presented for review here was carefully raised and preserved at all stages of the state court proceedings. However, where the highest court of the state actually decides the federal question, this Court looks no further. *Raley v. Ohio,* 360 U.S. 423, 436 (1959); *Jenkins v. Georgia,* 418 U.S. 153, 157 (1974); *Ocala Star-Banner Co. v. Damron,* 401 U.S. 295, 299 fn.3 (1971).

REASONS FOR GRANTING THE WRIT

I. Introduction

The Supreme Court of Mississippi has fundamentally misconstrued the Federal Tax Anti-Injunction Act, 28 U.S.C. §1341 to constitute a limitation upon state - yes, state - jurisdiction. This bizarre holding then led the Court to hold that this statewide property tax equalization class action could not be brought under 42 U.S.C. §1983 in state courts.

Invoking the standards of Section 1341, the Mississippi Court says

> Obviously this action could not have been brought in federal court under section 1983. . . . 387 So.2d at 723.

From this arguably correct conclusion, the Court then confuses a federal jurisdictional limitation with the enforceability of a federally created right and remedy in state court.

> **We conclude the section 1983 cause of action must fail in the state court because it would have failed if it had been filed first in federal court.** 387 So.2d at 723. (Emphasis supplied).

This holding is dead wrong. In one fell swoop, the Mississippi court has decided important questions of federal law

(a) in a way that reveals an utter failure to comprehend the spirit and letter of the Tax Anti-Injunction Act, 28 U.S.C. §1341,

(b) in a way that disturbs the vital balance between state and federal interests in the sensitive area of state taxation, and

(c) in a way that conflicts with holdings of the Courts of Appeals for the Seventh and Eighth Circuits and of at least four district courts.

II. The Supreme Court of Mississippi Has Decided an Important Question of Federal Law in a Way That Disturbs the Vital Balance Between Federal and State Interests in the Sensitive Area of State Taxation[9]

A question fundamental to federalism is presented here. Section 1341 in essence is a statutorily imposed abstention doctrine. It was enacted to restrict *federal court* interference with a state's tax system. Strong policy considerations - based on notions of comity - support leaving to the state courts the adjudication of a state taxpayer's substantive rights, including those federal in origin.

What were the rights a state taxpayer could have asserted in federal court before passage of Section 1341? Two kinds: (1) State created rights were asserted by non-resident taxpayers under diversity of citizenship jurisdiction and (2) federally created rights - those arising under the Constitution [here the Equal Protection Clause] and laws [here 42 U.S.C. §§1983 and 1988] of the United States where asserted by state taxpayers.

Since the enactment of Section 1341, it logically follows that the enforcement of these rights is the business of the state courts - subject, of course, to the Supremacy Clause which mandates state court vindication of fed-

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9. An important reason for granting certiorari is the maintenance of the delicate balance between legitimate federal and state interests. This has been recognized in *Kosydar v. National Cash Register Co.*, 417 U.S. 62, 65 (1974); *Smith v. United States*, 431 U.S. 291, 299 (1977).

erally created rights. Which gets us back to abstention and comity.

It is one thing to leave to the state's courts the prerogative of adjudicating in the first instance federal claims regarding state tax matters. It is another thing entirely for the federal judiciary to stay its hand in the face of state court inaction. Comity has no legitimacy when the state court abdicates its responsibility. The federalistic partnership requires two responsible partners. And when the state, for whatever reason, punts when it has the ball, the federal judiciary must step in. So much is made clear in Section 1341 itself: Federal jurisdiction is precluded only where there is "a plain, speedy and efficient remedy" available in state court. And that is why this Court long ago promised to review state court decisions on federal claims required to be asserted in state courts under Section 1341. *Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293, 301 (1943).

III. The Supreme Court of Mississippi's Interpretation of the Effect of Section 1341 on a Tax Equalization Action Brought in State Court Under 42 U.S.C. §1983 Is Exactly Opposite the Interpretation Unanimously Approved by the Federal Courts[10]

Arguably correctly,[11] the Supreme Court of Mississippi held that because of the bar of 28 U.S.C. §1341,

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10. Certiorari has been granted to review a decision of the highest court of a state on a substantial federal question where that decision is in conflict with decision of a U.S. Court of Appeals. *Katzinger v. Chicago Metallic Mfg. Co.,* 329 U.S. 394, 398 (1947); *MacGegor v. Westinghouse Electric & Mfg. Co.,* 329 U.S. 402 (1947) and *Michigan v. DeFillipo,* 443 U.S. 31, 35 (1979).

11. See, *Bland v. McHann,* 463 F.2d 21 (5th Cir. 1972), cert. den. 410 U.S. 966 (1973).

this statewide property tax equalization class action could not in the first instance have been brought in federal court. The Mississippi court says

> Obviously this action could not have been brought in federal court under Section 1983 because there is a plain, speedy and efficient remedy in Mississippi courts. 387 So.2d at 723.

The reader would anticipate a further explanation such as: "It is precisely because the Section 1983 remedy is available in state court that Section 1341 slams shut the door of the federal court." No such explanation is given. Rather, the Mississippi court amazingly holds

> We conclude the section 1983 cause of action must fail in the state court because it would have failed if it had been filed first in federal court [because of the bar of 28 U.S.C. §1341]. 387 So.2d at 723.

At least two courts of appeals and four district courts that have considered the same question hold exactly the opposite.

(1) Seventh Circuit: *28 East Jackson Enterprises, Inc. v. Cullerton,* 551 F.2d 1093, 1095 (7th Cir. 1977), cert. den. 434 U.S. 835. See also, *Sacks Bros. Loan Co., Inc. v. Cunningham,* 578 F.2d 172 (7th Cir. 1978); and *LaSalle National Bank v. Rosewell,* 604 F.2d 530, 533, 537 (7th Cir. 1979), cert. granted 100 S. Ct. 1310, 63 L.Ed.2d 758.

(2) Eighth Circuit: *Coon v. Teasdale,* 567 F.2d 820, 822 (8th Cir. 1977).

(3) The District Court decisions in conflict with the Mississippi Court's holding include *Horn v. O'Cheskey,* 378 F. Supp. 1280, 1287 (D. N.M. 1974); *Green v. Klinkofe,* 422 F. Supp. 1021, 1026 (N.D. Ind. 1976); *Advertiser Co. v. Wallace,* 446 F. Supp. 677, 681 (M.D. Ala. 1978); and

Edwards v. Transcontinental Gas Pipe Line Corp., 464 F. Supp. 654, 660 (M.D. La. 1979).

The Supreme Court of Mississippi has thus rendered a decision on an important question of federal law - the interrelationship of 42 U.S.C. §1983 and 28 U.S.C. §1341 - in a way in conflict with the prevailing interpretation in the federal courts.

IV. This Court Has "Promised" to Review This Case

Petitioners call upon the Court to fulfill a promise made 37 years ago. State tax claims have frequently involved substantial federal questions. The Federal Tax Anti-Injunction Act of 1937, however, severely restricted federal court jurisdiction over such claims. What then happens to the taxpayer's federal constitutional claims when the highest court of the state, acting in good faith or merely out of bullheadedness, refuses to provide a remedy?

This Court anticipated the problem in *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943). Speaking for a unanimous Court, Mr. Chief Justice Stone promised

> In such a suit he [Taxpayer] may assert his federal rights [in state court] and *secure a review of them by this Court.* 319 U.S. at 301. [Emphasis added].

The Court then explained that review here of a taxpayer's federal claim is a vital part of the balance struck between the conflicting interests of the state and of the taxpayer.

> This affords an adequate remedy to the taxpayer, and at the same time leaves undisturbed the state's administration of its taxes. 319 U.S. at 301.

Public perception is that this promise of Supreme Court review of a taxpayer's federal claim remains in effect. One court of appeals has recently observed

> Review of such state court decisions in the United States Supreme Court remains available to preserve whatever substantial federal rights may be implicated [by a taxpayer's federal claim brought in state court because of 28 U.S.C. §1341]. *United Gas Pipe Line Co. v. Whitman*, 595 F.2d 323, 330 (5th Cir. 1979).[12]

CONCLUSION

For the reasons set forth above, Petitioners respectfully pray the issuance of a Writ of Certiorari to the Supreme Court of Mississippi to consider the important federal questions presented together with all subsidiary questions fairly included therein.

Respectfully submitted,

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12. One way or the other, surely Petitioners are entitled to federal review of their claims based on 42 U.S.C. §§1983 and 1988. Should certiorari be denied, we read *New York Gaslight Club, Inc. v. Carey*, ... U.S. ....., 100 S. Ct. 2024, 2034, 64 L.Ed.2d 723 (1980) to authorize a subsequent action in U.S. District Court to obtain vindication of these rights.

CERTIFICATE

The undersigned, one of the attorneys for Petitioners herein, do hereby certify that I have this day caused to be served a true and correct copy of the foregoing Petition for a Writ of Certiorari on the following:

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This the 22nd day of December, 1980.

JAMES L. ROBERTSON

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI
NO. 52,018

THE STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI, ET AL.

v.

LOUIS FONDREN, ET AL. AND J. C. REDD, ET AL.

OPINION

(Filed August 20, 1980, Reported at
387 So.2d 712 (Miss. 1980))

EN BANC

SUGG, JUSTICE, FOR THE COURT:

This appeal involves two cases consolidated for trial in the Chancery Court of the First Judicial District of Hinds County.

Louis Fondren and others filed a bill of complaint to enjoin the State Tax Commission of the State of Mississippi from approving each county's recapitulation of its assessment rolls until such time as the Tax Commission complied with its duty to equalize assessments among the counties as provided in sections 27-35-113, 27-35-115 and 27-35-117 Mississippi Code Annotated (1972). In this suit, complainants sought to require the Tax Commission to

follow the mandate of Section 112[1] of the Mississippi Constitution of 1890 which requires taxation to be uniform and equal throughout the state and requires property to be assessed for taxes under general laws, by uniform rules, and in proportion to its value. The Tax Commission demurred to the bill of complaint, the demurrer was sustained, and Fondren appealed.

In *Fondren v. State Tax Commission*, 350 So.2d 1329 (Miss. 1977), we reversed and remanded for a trial on the merits holding Fondren had standing as an ad valorem taxpayer to maintain his suit, and the appeal statutes did not afford Fondren an adequate remedy at law. Further reference to *Fondren* will be made at appropriate places in this opinion.

After our decision in *Fondren, supra*, J. C. Redd and others, who are owners of taxable property in twelve (12) counties in Mississippi, filed a bill of complaint against the Tax Commission, its Chairman and Commissioners, the Chief of the Ad Valorem Division and the Chief of the Equalization Division to enjoin the Tax Commission from approving the assessment rolls of any county until the Tax Commission equalized the assessment rolls between the counties. In this case, complainants also sought

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1. Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed in proportion to its value, and no county, or other taxing authority, shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county. But the legislature may provide a special mode of assessment, fixing the taxable year, date of the tax lien, and method and date of assessing and collecting taxes on all motor vehicles.

recovery of all costs and expenses incurred in the lawsuit including attorneys' fees.

Following a hearing, the chancery court ordered that, beginning with the 1983 tax rolls and continuing with respect to the tax rolls for each successive year thereafter, the Tax Commission, its Commissioners, Officers and Agents, including their successors in office, were enjoined from accepting or approving the tax rolls of any county, or the recapitulation reports drawn therefrom, unless all real and personal property subject to ad valorem taxation within the county was valued and assessed as nearly as possible at its true value. True value was defined in the decree as full or one hundred percent value unless the legislature by 1983 enacted laws specifying a lesser percentage of true value for the determination of assessed value. The decree also required the Tax Commission to file progress reports with the court. The decree awarded complainants $58,000 attorneys' fees, payable out of any funds available to the Tax Commission, and retained jurisdiction of each of the consolidated cases for entry of such further orders or decrees necessary to effectuate the provisions of the final decree to the end that the defendants would be required to perform their duties to equalize assessments as required by statute in accord with the uniform and equal concept contained in Section 112 of the Constitution.

DOES THE STATE TAX COMMISSION HAVE AUTHORITY TO EQUALIZE ASSESSMENTS BETWEEN THE COUNTIES OF THE STATE?

On appeal, the Tax Commission contends, among other things, that the court did not have the authority to require it to equalize the assessment rolls between the different counties. This is the first question involved in this appeal.

In three cases, this Court has addressed the duty and authority of the Tax Commission to equalize assessments between counties under sections 27-35-113, et seq. Mississippi Code Annotated (1972). These statutes were first enacted in 1916 when the legislature created the State Tax Commission giving it broad powers necessary to equalize assessments between counties. The statutes were first considered in *Foreman v. Wheatley*, 113 Miss. 555, 74 So. 427 (1917). In that case the Tax Commission ordered corrections to be made in the personal assessment roll of Washington County to increase the assessed value of certain classes of personal property, and directed the Board of Supervisors of Washington County to call a meeting for the purpose of making the changes in the personal assessment roll in accordance with the order of the Tax Commission. The board of supervisors gave notice of a special meeting, and at the meeting, elected to enter a protest against the order of the Tax Commission. The protest was heard by the Tax Commission which overruled the objections of the supervisors and entered a final order directing the increase specified in the order. The board of supervisors declined to correct the assessment roll. Upon their refusal to comply with the order of the Tax Commission, the State On The Relation of J. M. Foreman, District Attorney, filed a mandamus to compel compliance with the order of the Tax Commission. The petition filed by the district attorney was met by a general demurrer which challenged the constitutionality of the statute creating the Tax Commission and its authority to compel boards of supervisors to make any changes in assessment rolls. The demurrer was sustained. On appeal, we reversed and remanded holding the statute was constitutional and that the Tax Commission was created as a department of government with the power over boards of supervisors to equalize assessments between counties. *Foreman* is dispositive of

the first issue presented on this appeal. It clearly defines the duties of the county tax assessors, the boards of supervisors, and the Tax Commission as these duties pertain to the assessment of property for taxation. It also shows that the interest of each individual is protected against overvaluation of his property in the assessment and equalization process by adequate remedies afforded by statute. Because of the importance of this case, we quote extensively from it.

> It is agreed that section 112 of our Constitution provides the general standard for the assessment of property for taxation, and for the collection of *ad valorem* taxes. It furnishes the ideal rule by which the rights of taxpayers are to be measured—the guiding star for the lawmaker and every officer charged with the duty of assessing and valuing property for taxation. But the goal towards which our state has been striving has never yet been fully attained. The key words of our Constitution are "uniform," "equal," "true value," and to accomplish results, "general laws." While property in every county is to be assessed at true value, it is a matter of common knowledge and comment that in practice this has been accomplished in name, and not in fact. The Constitution provides for a county assessor, fixes his term of office, and contemplates that this officer shall list and value all taxable property in his county. Experience for a long time indicates that the assessor generally places upon his roll unchanged the various valuations fixed by the property owner himself. The power to equalize assessments has heretofore been conferred upon the boards of supervisors, but experience further demonstrates that there are as many different standards of values in the state as there are separate boards of supervisors. The uniform rate of state tax must be applied to the unequal and varying

valuations over the many counties of our commonwealth. Valuations of the same class of property has varied in adjoining counties without any real or substantial reason for the difference. It follows that heretofore one county has been contributing to the state more revenue than many other counties with the same amount of taxable property. *The burden has been unequally distributed. This is the known mischief which chapter 98, Laws 1916, has undertaken to remedy.* This law was intended to be a step forward toward the ideal system contemplated by our organic law. *Its purpose is to accomplish the very uniformity and equality demanded by the Constitution.* . . . (113 Miss. at 587, 588; 74 So. at 429)

. . . .

The act itself provides no new standard of assessments. The object of the new law is to assess all property at its true value to the end that all taxable property shall bear its just proportion of the burdens. The general constitutional scheme is binding on assessors, boards of supervisors, and the courts. It is equally binding upon the state tax commission. . . . (113 Miss. at 589; 74 So. at 429, 430)

The second, third, fourth, fifth, and sixth grounds of the demurrer challenge the constitutionality of the statute upon the ground that a compliance by the board of supervisors with the order of the state tax commissioners would deprive the individual taxpayer affected by the order of his property without due process of law in this, that the act under review does not provide for notice to be given the taxpayer of the proposed increase, does not afford an opportunity to be heard, and that it does not afford redress against an excessive or

unconstitutional valuation. . . . (113 Miss. at 590; 74 So. at 430)

. . . .

There is another construction, however, to be placed upon the language of the act, and according to this construction the rights of the individual taxpayer would be noticed and safe-guarded. Section 6 does provide that the meeting of the board of supervisors is to be held upon notice; this notice is a general notice by publication and for the benefit of the public generally. By this notice every taxpayer is advised of the meeting and has a right to attend; by the terms of this section the board of supervisors are not directed to increase every individual taxpayer and fix an arbitrary percentage, but distributes the burden of increase amongst the individual taxpayers within the class of property affected by the order. In raising this class of property they are directed by the state board to increase not the assessment of any particular individual, but the total assessed valuation of that class of property. In accomplishing this increase of total valuation, the board of supervisors are accorded the absolute right to distribute the burden of increase uniformly amongst the taxpayers of that class. The section of the act makes use of the word "uniformly;" we regard the use of this term here in the sense in which the Constitution itself used the word "uniform." To illustrate, then: If honest Richard Roe originally gave in his assessment at the top market price—at constitutional true value—and the state board has ordered an increase by which he is to be affected honest Richard has a right to appear at this meeting of the board and object to the increase so far as he is concerned. In objecting, he has the right to tender evidence, if necessary, to establish

his contentions. If the board should overrule his objections he then has the right, under section 81 of the Code, to appeal from the order of the board to the circuit court of his county. In the circuit court his appeal could be tried anew and a judgment according to right and justice entered. By this construction the interests of any and every individual taxpayer would be protected and an adequate remedy afforded. . . . As to the class of property upon which the increase is ordered there is no final adjudication until the local board has complied with the order of the state board. In complying with this order the local board is not denied the right to hear the complaints of individuals, and to refuse to increase the assessment of any particular individual, whose property is already assessed at actual value. (113 Miss. at 592, 593; 74 So. at 430, 431)

. . . .

The legislature in providing that the state board shall return the assessment roll to the local board for correction indicated a purpose to leave full jurisdiction with the board of supervisors to make the increase in a way not to injure anyone. . . . (113 Miss. at 594; 74 So. at 431)

. . . .

The statute under review in nowise undertakes to equalize as between individuals, but exclusively between counties. At the same time it does not either expressly or by implication supersede the jurisdiction of the local board to equalize as between individuals, and nowhere does it take away the right of the individual to an appeal. The courts are open to the individual and his appeal to the court even if successful

does not and will not disturb the final approval of the roll as to any and all persons who do not appeal.

. . . *By the present statute the state board is constituted a higher tribunal with authority to speak before the several rolls are approved.* As already indicated, the legislature must have thought that many counties were systematically undervaluing certain classes of property. The Constitution does of course provide for an assessor, fixes his term of office, and contemplates that he shall discharge the duty of listing and valuing the taxable property in his county. When he has done so, the board of supervisors have heretofore discharged the duty of equalizing as between all taxpayers of the county. While the members of the board of supervisors are provided for by the Constitution, the Constitution itself nowhere expressly provides that the board shall equalize assessments. The power to equalize is statutory. . . . No particular section of the Constitution has been called to our attention which, in our judgment denies to the legislature the power here asserted. The power of the legislature as the immediate representatives of the people is supreme when not in conflict with the organic law. In their wisdom the legislature has provided the law in a commendable desire more nearly to accomplish uniformity and equality. It does not interfere with the work of the assessor, but leaves this official free and untrammeled in the discharge of his duties so far as his judgment goes. The Constitution nowhere makes the judgment of the assessor a finality. To do so would render the revenue laws impotent. It is conceded that the valuations placed by the assessor have heretofore been either increased or decreased by the board of supervisors, and that under a statutory power. *The present law simply*

goes a step further and constitutes a still higher tribunal with statutory power to review, alter, and change the valuations of boards of supervisors whenever necessary to accomplish equality and uniformity as between counties. (113 Miss. at 596, 597, 598; 74 So. at 432, 433)

. . . .

The state tax commission is created as a department of government with revisory power over boards of supervisors in the work of equalizing assessments between counties. In applying the leveling process as between counties it does not disturb the jurisdiction of the county boards to level or equalize between individuals. Each board has its own peculiar functions to perform. The object of each is to accomplish uniformity and equality, and to see that all property is assessed as nearly as possible at true value. (113 Miss. at 599; 74 So. at 433)

. . . .

The statute, in our judgment, authorizes the state board to increase or decrease the total valuation of any class of property in any county to the end that there may be an equalization as between counties. In doing this the board has no authority to increase the assessment of any property above that placed by one or more of the highest assessed counties of the state. It could not arbitrarily exceed the highest valuation placed by any board upon the class of property dealt with. In all cases the act itself expressly limits the state board to true value. If they exceed true value, the individual has a right to protect himself. We cannot assume that the state board will exercise arbitrary power or undertake to confiscate property. If in equalizing as between counties it results that the total valuation of any class of property is thereby in-

creased, a legitimate result is accomplished. The board has the same power to decrease as it has to increase, and the necessary result of the exercise of this power is not unlawful, but legitimate. Whether the board will rightfully exercise this power is a question that cannot now concern us. (113 Miss. at 601; 74 So. at 433, 434)

The authority of the Tax Commission to equalize assessments between counties was considered for the second time in *Taylor v. State,* 121 Miss. 771, 83 So. 810 (1920). The Tax Commission ordered the Board of Supervisors of Quitman County to increase the assessed value of the real property in Quitman County. The board of supervisors declined to make the change and a writ of mandamus was issued commanding the board to make the change. Instead of obeying the writ, the board passed an order refusing to comply with the writ. The board was adjudged to be in contempt for failing to obey the writ of mandamus. On appeal, the judgment finding the defendants in contempt was affirmed. This Court stated:

> By this appeal we are again called upon to construe certain portions of chapter 98 of the Laws of 1916 creating a state tax commission and defining its powers and duties. There is but one real question involved in this appeal, and that is whether or not by this act the state tax commission is given the absolute authority to order the board of supervisors to raise or lower the assessments on certain classes of property which in the judgment of the state tax commission are either over or under assessed when compared with the property of the same classes in other counties. *In other words, as between the state tax commission and the board of supervisors, which one of them has the superior or final judgment to say whether or*

not property or classes of property in a county are properly assessed, overassessed, or underassessed. It is the duty of the board of state tax commissioners to equalize the taxes among the different counties of the state. The board of supervisors is the equalizer of the assessments of the individuals. *The state tax commission is the equalizer of the assessments among the different counties.* (121 Miss. at 796, 797; 83 So. at 813)

. . . . .

In other words, by chapter 98 of the Acts of 1916 the state tax board is given the final decision, as between these two boards, as to the assessable valuation of the classes of property mentioned in its order. (121 Miss. 800, 801; 83 So. at 814)

The third case involving the power of the Tax Commission to equalize assessments between counties was *Fondren v. State Tax Commission,* 350 So.2d 1329 (Miss. 1977). We reaffirmed the duty and authority of the Tax Commission to equalize assessments between counties under section 27-35-113 Mississippi Code Annotated (1972) in the following language:

Having determined that Fondren has standing to bring this suit and that he has no adequate remedy at law, we must consider whether his allegations of fact, if proved, warrant the conclusion that the Commission's actions result in the collection of taxes "without authority of law." We have no hesitation in concluding that Fondren's bill of complaint states a cause of action on which relief may be granted.

The mandate of section 112 of the Constitution is plain. The Commission's duty to enforce the mandate of Section 112 is equally plain. Miss. Code Ann.

> §§ *27-35-113 through -117 (1972)*. The portions of Fondren's complaint quoted at the outset of this opinion clearly allege that the Commission has not performed its duty. He contends that two pieces of property, having the same market value but located in different counties, may be valued quite differently by the local assessors. Having begun with an inequality, that inequality is compounded when one county chooses to assess its property at a different percentage of its determined value than does another county. The State tax of four mills on the dollar is then collected on the basis of these disproportionate assessments. Thus, owners of parcels of land of identical value in different counties may face radically different tax liabilities. These allegations, if proved, constitute a blatant violation of section 112 of our Constitution. In essence, Fondren alleges that taxation is not uniform and equal throughout the State. He contends that property is not taxed in proportion to its value. He maintains that property is not assessed for taxes under general laws, and by uniform rules, and in proportion to its value. *Proof of his allegations would establish that the Commission had failed in its statutory duty, under Mississippi Code Annotated section 27-35-113 (1972), to equalize assessments as required by section 112. If Fondren can prove the constitutional and statutory violations he allleges, he will be entitled to relief.* (350 So.2d at 1334)

From the foregoing cases, there remains no doubt that the Tax Commission has the duty and the authority to equalize assessments between the various counties of the state. The trial court found that no serious objection was raised to the allegation that the assessments between the

counties had not been equalized. In his opinion, the chancellor stated:

> As a matter of fact, there is almost complete agreement of both the Commission witnesses and the complainants' witnesses as to the complete lack of uniformity or equality of assessments in this state. The evidence is staggering and shocking to the senses.

The chancellor also held that, assuming the various tax assessors in the eighty-two counties of the state determined the true value of property subject to assessment for taxation, the assessed value as equalized by the boards of supervisors ranged from ten percent to thirty percent of true value in the various counties. The Commission does not take issue with this finding of the chancellor in its brief, neither does it assign as error that the chancellor was mistaken in his finding of fact.

After these cases involved in this appeal were tried, the legislature adopted Senate Bill No. 2672 at the 1980 session of the Mississippi Legislature. Section 24 of S.B. 2672 repealed the statewide four mill ad valorem tax levy effective January 1, 1982.

The Tax Commission argues that repeal of the four mill statewide ad valorem tax levy destroyed the single unified state taxing district, and the rule announced in *Thompson v. Anding,* 370 So.2d 1335 (Miss. 1979) and *Xerox v. City of Jackson,* 328 So.2d 330 (Miss. 1976) should be applied. These cases held that the provisions of equal and uniform assessments as contemplated in Section 112 of the Constitution are to be applied only to one taxing district, and a comparison of assessments between two different taxing districts is not necessary in applying the uniform and equal concept set forth in Section 112.

This argument overlooks the fact that there are twenty-five multi-county taxing districts within the state. The state is divided into thirteen junior college districts and each county in the state is in a junior college district. These counties contribute to the support of the junior colleges by ad valorem taxes collected for that purpose. If there were no other multi-county districts, equalization between counties could be accomplished by equalizing the assessments in the counties comprising each junior college district.

However, there are twelve other multi-county districts in the state which support these districts by ad valorem taxes. The number of counties in the additional multi-county districts range from two to fifteen. The boundaries of these additional multi-county districts do not correspond to the boundaries of the thirteen junior college districts but overlap the junior college districts and in some districts overlap other multi-county districts.

Pearl River Basin Development District contains thirteen counties and is one of the additional multi-county districts. The proof shows that the assessed value of property in this district ranges from eight percent to twenty percent of true value.[2] Simpson and Copiah Counties are in this district and in Simpson County property is assessed at eight percent of true value and in Copiah County, twenty percent of true value. The tax rate levied to support this district is the same in Copiah and Simpson Counties. Thus, the taxpayers in Copiah County are bearing more than their fair share of the burden of supporting the district because their property is assessed at twenty percent of true value as opposed to eight percent in Simpson County.

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2. This assumes that the assessors and the boards of supervisors in each county of the district used the same criteria to establish true value.

Equalization of assessments between the counties in this district by the Tax Commission would achieve the uniform concept of Section 112 as to this district. However, many of the counties in this district are in different junior college districts and multi-county districts, so equalization of assessments between the counties in this district would not accomplish equalization between the counties in junior college and multi-county districts which overlap the Pearl River Basin Development District.

The multi-county districts within the state overlap to the extent that it would be impossible to equalize assessments between counties on a district by district approach. The only practical solution to the problem is to equalize assessments between all of the counties in the state. When this is accomplished, it will not matter how many different multi-county districts any given county is in because equalization of assessments between counties will have been applied uniformly.

The Tax Commission argues that section 14 of S.B. 2672 is designed to eliminate the inequities that existed between counties in multi-county districts. In our opinion the Tax Commission has not correctly interpreted section 14 because it is simply a limitation on the amount of revenue that may be raised by taxation for the support of a multi-county district. It limits an increase in revenue for the district to not more than ten percent that was collected in the next preceding year. It does nothing toward equalization between the counties.

It is true that *Thompson* and *Xerox* hold equal and uniform assessments, as required by our Constitution, are to be applied only to one taxing district. However, each of the multi-county districts is a taxing district; therefore, to satisfy the uniformity requirements of our Constitution, assessments must be equalized between the counties in

each district and this can be accomplished by statewide equalization as demonstrated above.

The duty to equalize assessments between counties has been delegated to the Tax Commission by the legislature. We affirm the decree requiring the Tax Commission to equalize assessments between all of the counties in the state. If the legislature had not provided for equalization of assessments between counties, we fear our entire scheme of ad valorem taxation would be in jeopardy because it would not meet the constitutional requirement of uniformity and equality.

MUST PROPERTY BE ASSESSED FOR TAXATION AT TRUE VALUE?

The final decree provided in part as follows:

> (a) That, beginning with the 1983 tax rolls, and continuing with respect to the tax rolls for each successive year thereafter, the defendants, their commissioners, officers, and agents, and specifically their successors in office, should be and they hereby are, absolutely and unequivocally enjoined and prohibited from accepting or approving the tax rolls of any county, or the recapitulation reports drawn therefrom, unless all real and personal property subject to ad valorem taxation within the county shall have been valued and assessed as nearly as possible at its true value, it being expressly provided that the term "true value" means full or 100% of true value, unless the legislature has by 1983 enacted laws specifying a lesser percentage of true value for the determination of assessed value; . . .

Following the chancellor's decision, the Legislature enacted Senate Bill 2672 authorizing assessment of property

for taxation in proportion to its true value. In order to compare the amendments in sections 4, 7, 8 and 10 with the previous statutory law, we set forth portions of the sections before and after the amendments.

27-35-15 before amendment:

> The tax assessors shall annually *assess* all personal property subject to taxation in their respective counties. . . .

1980 amendment:

> The tax assessors shall annually *appraise* all personal property subject to taxation in their respective counties *at true value and assess it in proportion thereto*. . . .

27-35-31 before amendment:

> The property of each corporation or joint stock company (whether organized under the laws of this state or any other state or country) shall be *assessed and taxed as that of a person;* . . . Its land and tangible personal property shall be *assessed* and taxed where situated on the first day of January of the year; . . .

1980 amendment:

> The property of each corporation or joint stock company (whether organized under the laws of this state or any other state or country) shall be *assessed and taxed as that of a person;* . . . Its land and tangible personal property *shall be appraised at true value and assessed* and taxed where situated on the first day of January of the year; . . .

27-35-49 before amendment:

It shall be the duty of the tax assessor to assess all the lands in his county and he shall require the owner, agent, or person having possession, or charge, of any lands, to render a list of all lands owned, or in charge, or in possession, of such owner, agent, or person, *and land shall be assessed according to its true value,* taking into consideration the improvements thereon, . . .

1980 amendment:

It shall be the duty of the tax assessor to assess all the lands in his county and he shall require the owner, agent, or person having possession, or charge, of any lands, to render a list of all lands owned, or in charge, or in possession, of such owner, agent, or person, *and land shall be appraised according to its true value and assessed in proportion thereto,* taking into consideration the improvements thereon.

27-35-63 before amendment:

Lands which have been sold to the state for taxes, shall be *assessed at their proper value; . . .*

1980 amendment:

Lands which have been sold to the state for taxes shall be *assessed in proportion to their true value, . . .*

We hold that county tax assessors are required by the amendments set forth above to appraise property to be assessed by them at *true* value.

We are of the opinion that the 1980 amendments directing the assessors to "assess it in proportion thereto" permit them to assess property at some percentage of true value less than 100%. The amendments and our

interpretation of them are not in conflict with Section 112 of our Constitution which was amended in 1960 to provide: "Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its value."

We note that section 27-35-113 was not amended by S. B. 2672. 27-35-113 provides, "that all property in general shall be assessed as nearly as possible at true value." This language has remained unchanged since the enactment of the statute in 1916. We recognize that amendments by implication are not looked on with favor, but this language conflicts with the 1980 amendments of other statutes dealing with the valuation of property for assessment. Section 112 of the Constitution was amended in 1960 to permit assessment of property for taxation "in proportion to its value." We conclude that the last enactment of the legislature should control and adhere to our former statement herein that property may be assessed at a percentage of true value less than 100%.

Although the 1980 amendments do not prescribe a fixed percentage of true value at which property is to be assessed, this omission does not prohibit tax assessors from assessing property at a percentage less than true value. *Foreman v. Wheatley,* 113 Miss. 555, 74 So. 427 (1917) held that the statute (now section 27-35-113) authorizes the Tax Commission to increase or decrease the valuation of any class of property in order to achieve equalization. In that case we stated:

> *The statute, in our judgment, authorizes the state board to increase or decrease the total valuation of any class of property in any county to the end that there may be an equalization as between counties. In doing this the board has no authority to increase the assessment of any property above that placed by one or more of*

the highest assessed counties of the state. It could not arbitrarily exceed the highest valuation placed by any board upon the class of property dealt with. In all cases the act itself expressly limits the state board to true value. If they exceed true value, the individual has a right to protect himself. We cannot assume that the state board will exercise arbitrary power or undertake to confiscate property. If in equalizing as between counties it results that the total valuation of any class of property is thereby increased, a legitimate result is accomplished. *The board has the same power to decrease as it has to increase, and the necessary result of the exercise of this power is not unlawful, but legitimate.* Whether the board will rightfully exercise this power is a question that cannot now concern us. (113 Miss. at 601, 74 So. at 433, 434)

The former statute, now section 27-35-113, which was construed in *Foreman,* authorizes the Tax Commission to require a fixed percentum to be added to the valuation of any class of property in any county found too low or deducted from the assessed valuation of any class of property found too high in order that the assessment of the various classes of property in the several counties of the state will be reasonably equal and uniform throughout the state. In the exercise of this power, the Tax Commission must first determine a percentage of true value at which property will be assessed; otherwise, the uniformity and equality required by the Constitution and the statute would not be achieved. Section 112 of the Constitution authorizes assesment for taxes under general laws "and by uniform rules." As we view it, the legislature has given the Tax Commission the power to promulgate uniform rules and if equalization of assessments between counties is to be accomplished, a uniform rule fixing the percentage of true value at which property is to be assessed will be required.

This is a matter which the legislature may desire to consider and make more specific, but adequate authority exists under the Constitution and our present statutes to authorize the assessment of property at a percentage less than true value, this percentage to be fixed by the Tax Commission so as to achieve equalization of assessments between the counties.

When the chancellor rendered his opinion, S.B. 2672 had not been passed by the legislature. The chancellor was correct in requiring property to be assessed at true value under the statutes in force at that time; however, we hold that S. B. 2672 amended existing statutes so that property may be assessed for taxation at a percentage less than true value.

WERE COMPLAINANTS ENTITLED TO RECOVER ATTORNEYS' FEES?

The chancellor allowed complainants attorneys' fees in the amount of $58,000, holding that the allowance of attorneys' fees was proper because complainants brought their action, not only under Section 112 of the Constitution of Mississippi, but also under the due process clause of the Fourteenth Amendment to the United States Constitution and 28 U.S.C.A. section 1983. 28 U.S.C.A. section 1988 provides that attorneys' fees may be allowed in 1983 actions at the discretion of the court.

We agree with complainants that state courts have jurisdiction of 1983 actions concurrent with federal courts, but of course, a state court entertaining a 1983 action has no more jurisdiction than a federal district court.

28 U.S.C.A. section 1341 provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax

under State law where a plain, speedy and efficient remedy may be had in the Courts of such State.

It is well established that generally it is not necessary to exhaust state remedies before seeking relief under section 1983. However, the exhaustion of state remedies rule is applicable in actions brought under section 1983 to enjoin, suspend or restrain the assessment, levy or collection of taxes because of 1341.

In *Bland v. McHann*, 463 F.2d 21 (5th Cir. 1972) cert. denied 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700 (1973) the Fifth Circuit Court of Appeals found that Mississippi law provides a plain, speedy and efficient remedy for claims that assessments for taxes in a municipality were not equal and uniform. In holding that the federal district court did not have jurisdiction to hear the case, the court held that neither judicial decisions nor section 1341 required the state remedy to be the best remedy available or even equal to or better than the remedy which might be available in federal courts. The court also held:

> It is well established that §1341 is an explicit congressional limitation on the jurisdiction of the federal courts in cases which would enjoin, suspend, or restrain state tax levy, assessment or collection. Taxpayers seek to circumvent §1341 by arguing that relief under §1983 is supplemental and is not limited to any requirement of exhaustion of state remedies. We do not disagree with the general rule that exhaustion is not required in §1983 cases; however, in this case §1983 collides full force with a specific congressional limitation on federal jurisdiction. In such circumstances we are convinced that §1341 must prevail. (463 F.2d at 24)

Obviously this action could not have been brought in federal court under section 1983 because there is a

plain, speedy and efficient remedy in Mississippi courts. Complainants, by filing their action in state court, invoked the plain, speedy and efficient remedy granted them by the chancery court and affirmed here.

We conclude the section 1983 cause of action must fail in the state court because it would have failed if it had been filed first in federal court. We therefore reverse the decree wherein it allowed complainants to recover attorneys' fees.

DID COMPLAINANTS HAVE STANDING TO MAINTAIN THEIR SUITS, AND WAS INJUNCTIVE RELIEF PERMISSIBLE?

Two other arguments of the Tax Commission should be noted. First, the Tax Commission attacks the standing of the complainants to maintain these suits. This question was answered contrary to the contention of the Tax Commission in *Fondren v. State Tax Commission,* 350 So.2d 1329 (Miss. 1977) where we held that Fondren had standing to bring his suit. This holding applies, not only to Fondren and his case, but also to Redd and the other complainants in their case.

Second, the Tax Commission again argues that section 11-13-11 Mississippi Code Annotated (1972) does not authorize these suits. In *Fondren* we held that that the taxpayer was authorized to bring a suit under section 11-13-11. We adhere to our former finding and state further that these suits could have been brought in equity absent section 11-13-11 under the maxim, "Equity will not suffer a wrong without a remedy." Complainants, together with all other taxpayers in the state, are guaranteed equality of taxation by Section 112 of our Constitution. The uncontradicted proof is that this constitutional concept of equality has not been met for many reasons. The principal reason

is that the Tax Commission has made no serious effort to equalize assessments between the counties as authorized by statute. Complainants have suffered a wrong; they are entitled to a remedy for this wrong; no adequate remedy exists at law; therefore, they properly invoked the injunctive power of equity to remedy a wrong.

CONCLUSION

The chancellor rendered an excellent opinion in these cases, and many of his conclusions as to the best course to pursue in achieving equalization of assessments between counties were adopted by the legislature and incorporated in Senate Bill 2672. For example, the chancellor held that it is impossible to equalize assessments without first determining true value. The legislature responded and provided in sections 4, 5, 7, 8 and 10 that tax assessors shall appraise property at true value. The legislature also defined true value in section 9.

The chancellor also suggested that reappraisal could be accomplished by the county tax assessors by establishing the true value of property to be assessed by utilizing the expertise of the Tax Commission in this field. Section 12 authorizes the Tax Commission to promulgate rules and regulations setting forth the minimum requirements for certification of assessors or their assistants, or both, requires each county to have at least one certified appraiser, and provides for expenses for training local tax assessors and their assistants. This will enable all tax assessors to use the same criteria in establishing true value. Section 13 recognizes that in order to accomplish statewide reappraisal of property it will be necessary to have adequate aerial photographs of the state and authorizes the Tax Commission to contract for aerial photographs and in turn sell to the counties and municipalities negatives

of such aerial photographs. In sections 14 and 15 the legislature limited the amount of revenue that might be raised in each county and in multi-county districts not to exceed ten percent of the revenue for the preceding fiscal year. Section 16 provides that if revenue is collected in excess of that authorized in sections 14 and 15, any excess must be invested and calculated in the budgets of the counties for the succeeding fiscal year. This should effectively allay the fear that taxes will be increased an excessive amount. Section 17 recognizes that certain counties may desire to accomplish reappraisal by contract with appraisal firms, but requires all contracts for reappraisal to be approved and supervised by the Tax Commission.

In our opinion the legislature has taken a giant step toward equalization of the assessment of property for taxation by the enactment of S. B. 3672 and is to be commended for its forthright approach to this problem which has plagued the State of Mississippi for many years.

We are of the opinion that the injunction ordered by the chancellor is required because the Chairman of the state Tax Commission testified that he did not consider that Section 112 of the Constitution and section 25-37-113 Mississippi Code Annotated (1972) imposed a duty on the Tax Commission to equalize assessments between the counties. We are confident that the Tax Commission will now recognize its duty and responsibility to equalize assessment between counties and will proceed with the task in a speedy and efficient manner.

S. B. 2672 went into effect on May 16, 1980 and requires the county tax assessors to appraise property to be assessed by them at true value. This requirement applies to the assessments for the year 1980 indicating to us that the legislature intends for equalization of assessments to

be accomplished forthwith. If the tax assessors, the boards of supervisors, and the Tax Commission will attack the problem of equalization diligently, we are of the opinion equalization of assessments between the counties can be accomplished earlier than the 1983 date fixed by the chancery court.

By way of summary, we affirm in part, reverse in part and modify. We affirm the decree enjoining the Tax Commission from accepting and approving assessment rolls from any county for the tax year 1983 unless the Tax Commission equalizes the assessment rolls between all of the counties of the state. We reverse that part of the decree ordering that property be assessed at true value and hold that assessed value may be a percentage of true value. We reverse the allowance of attorneys' fees. The chancellor required the State Tax Commission to file a master plan to assist the counties in determining true value of taxable property no later than May 1, 1979. This date having passed, we modify the decree to require the plan to be filed no later than November 15, 1980.

AFFIRMED IN PART, MODIFIED IN PART, REVERSED IN PART, AND RENDERED.

PATTERSON, C.J., ROBERTSON, P.J., AND WALKER, BROOM, LEE, BOWLING AND COFER, JJ., CONCUR. SMITH, P.J., DISSENTS.

IN THE SUPREME COURT OF MISSISSIPPI
NO. 52,018

THE STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI, ET AL.

v.

LOUIS FONDREN, ET AL. AND J. C. REDD, ET AL.

SMITH, PRESIDING JUSTICE, DISSENTING:

Almost a century has elapsed since the Constitutional Convention of 1890 at which the Mississippi Constitution was adopted. In this year of 1980, we find ourselves mandating a course of action not hitherto attempted. It is one that contemplates radical changes in the methods of assessing property for taxation which have been followed for almost one hundred years. The principal impact, of course, will fall upon the owners of real property, and its practical consequences cannot be foreseen.

I have the utmost respect for the views of the majority. I admire the erudite and reasoned controlling opinion. My objection is pragmatic. Neither the legislature nor the courts should order or attempt to require the accomplishment of an impossibility.

The key word, of course, is "true value." It is the foundation stone upon which the whole edifice rests. It is required that each piece of real property in Mississippi be "appraised at its true value." The State of Mississippi embraces territory very extensive in area, consisting of numerous types and conditions of property, the value of which is affected by many factors, including location, improvements, use and others. It is known that equalizing property values in an area as small as one county by a locally elected assessor is of surpassing difficulty. The familiarity of this Court with the irreconcilable testimony

of countless appraisers, especially in eminent domain suits, should have made it incontrovertibly plain that determining "true value," which in any case can only be an opinion, on a statewide basis, is an impossibility.

If this cannot be done, that is, appraise all realty throughout the state at its "true value," and I am unable to conceive of any method viewed realistically by which it can be, then it is idle to take the next proposed step to order it taxed "in proportion to its true value." It is difficult to envisage the result of the attempt. Certainly, the impact on landowners and land values will not be inconsiderable. The cost cannot be viewed as negligible.

The idea is attractive but reality at times prevents the fulfillment of our most Utopian dreams. Perhaps we should recognize that although we may yearn for such a change, our ability to bring it about is dubious.

Omar Khayyam, many centuries ago, expressed the thought thus:

"Could we but grasp this sorry
scheme of things entire

And shatter it to bits -

Could we not remold it nearer

to the hearts desire?"

RUBAIYAT.

I adhere to the views expressed in my dissent and that of Justice Robertson, in which Justice Inzer concurred, in *Fondren v. State Tax Commission,* 350 So.2d 1329 (Miss. 1977).

APPENDIX B

IN THE SUPREME COURT OF MISSISSIPPI
SEPTEMBER 24, 1980

ORDER ENTERED

THE COURT SITTING EN BANC:

52,018 The State Tax Commission of the State of Miss., et al. v. Louis Fondren, et al. and J. C. Redd, et al.; Chancery, Hinds; Petition for Rehearing Denied.

APPENDIX C

IN THE
CHANCERY COURT OF THE FIRST JUDICIAL
DISTRICT OF HINDS COUNTY, MISSISSIPPI

NO. 105,131

J. C. REDD, et al.
COMPLAINANTS

vs.

THE STATE TAX COMMISSION OF THE STATE OF
MISSISSIPPI, et al.
DEFENDANTS

and

NO. 96,159

LOUIS FONDREN, et al.
COMPLAINANTS

vs.

THE STATE TAX COMMISSION OF THE STATE OF
STATE OF MISSISSIPPI, et al.
DEFENDANTS

OPINION OF THE COURT

(Filed January 5, 1979)

Stability of government depends on the fairness of treatment of its people. Equality before the law is not an idle dream, dallied with in idyllic thinking, but a vibrant, dee-seated, meaningful principle for which Americans have fought, bled, and died. It was one of the moving forces that precipitated our declaring ourselves to be free and independent. "We hold these truths to be self-evi-

dent . . .", and so self-evident was it that it was not until the Fourteenth Amendment that it was actually written into our United States Constitution. It did provide ". . . Duties, imposts, and excises shall be uniform . . ." The first two Constitutions of the State of Mississippi did not include equality in the provisions for taxation, but each subsequent Mississippi constitution, including the Constitution of 1890, contained the provision that "Taxation shall be uniform and equal throughout the state."

Taxation has been described as a burden or charge upon property or persons for the public good. Government is the vehicle for determining and providing for the public good. We may wince under the weight of taxation when it is fair, but we bitterly complain when government requires its cost to be unequally borne.

The people of the State of Mississippi have wisely provided for uniformity and equality in matters involving taxation by having put Section 112 in the Constitution of Mississippi. It reads as follows:

> "Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particuar species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed in proportion to its value, and no county, or other taxing authority, shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county. But the legislature may provide a special mode of

assessment, fixing the taxable year, date of the tax lien, and method and date of assessing and collecting taxes on all motor vehicles."

The Legislature of the State of Mississippi has wisely enacted laws to carry out the constitutionally expressed will of the people. The Mississippi state Tax Commission was created in 1916 to be the supervising and implementing force on the part of state government to carry out the mandate of the Constitution. Custom and lapse of time have a tendency to erode good plans and provisions for the protection of equality of taxation.

Although it is empowered and required to collect and preserve data and information pertaining to quantity and value of property in each county in the state subject to assessment, so necessary to enable the Commission to equalize assessments among the various counties of the state as required by law, **the Mississippi State Tax Commission does not know what the true value of property located in the various counties actually is and admittedly has absolutely no way on earth, using the data which it now collects and receives, to carry out its duty of equalizing assessments.** Furthermore, **it does not even ask the counties to report the information that would be required so to do.** Sections 27-35-113, 115 of the Mississippi Code of 1972 require Mississippi State Tax Commission to require true value and equality.

Complainants here, the two suits of both Fondren and J. C. Redd et al., having been consolidated for the purpose of this hearing, have asked this Court for relief and have alleged that there is widespread inequality of assessments within the various counties and among the various counties statewide and among the various classes of property within the various counties and among the various counties statewide. This opinion is being written

for entry as the opinion of the Court in each of the cases. A great many witnesses testified. The vast majority of the elected county tax assessors in the various counties testified, as did a number of outstanding expert witnesses. A tremendous reservoir of information concerning ad valorem assessment and taxation in the State of Mississippi has been compiled in this case which is of unmatched value not only to the Court but perhaps also to the Mississippi State Tax Commission and to the Mississippi State Legislature should it desire to avail itself of this information.

No serious objection has been raised to the allegation that there exists no equality in assessments within or between counties or within or between classes of properties within counties or statewide. As a matter of fact, there is almost complete agreement of both the Commission witnesses and Complainants' witnesses as to the complete lack of uniformity or equality of assessments in this state. The evidence is staggering and shocking to the senses. The very seeds of public discord and militant outcry exist in the disparity of treatment of taxpayers in the various counties and districts and throughout the State of Mississippi. Assuming, because there is no better way of determining at the present time the actual true value of property in Mississippi, that the values assigned by tax assessors in the various counties of this state are true value, even though it is obvious that they are not, it is apparent that there is no equality of assessment. Percentages used vary between roughly 10 percent to 30 percent of true value of the various classes of property in the various counties. The Court is convinced that a statewide sales ratio study would demonstrate actually greater variations. In many counties, flat rates of assessed value are assigned to all cultivatable acres, for instance, even though some of those cultivatable acres may lie in hill sections of a county

and other cultivatable lands lie in delta sections of the same county, yet each is assigned an assessed valuation which is the same for both types of soil. Ample evidence was introduced that land which had great productivity was assigned the same value as land which had very poor productivity. Patently, unproductive or low productive land cannot have the same value as highly productive land. Yet this is common throughout our state. Tax assessors tend simply to use the same assessment that they had on the property for the previous year and to continue to use it until there is a sale of the property. Many, many situations exist where rapidly increasing property values, especially in commercial districts, are not reflected in increased assessments unless and until there is a sale of the property or a mortgage recorded.

The tax laws of this state do not provide for assessments to remain static until there is a sale or transfer of property. Fluctuating values must be reflected in the tax rolls as fluctuating costs of administering government will be reflected in millage levels. Those who buy property, such as commercial property, today have the right to equal treatment in the matter of assessments with those who have owned their property for years. **The law requires that the assessments be made each year.**

The Complainants have adequately, sufficiently, even overwhelmingly, proved their case. This Court believes that they are here in their individual capacities and that they do represent a definable class. They are taxpayers engulfed in an altogether unfair system of assessments which require them to bear an unequally heavy load of taxation. Because the Mississippi State Tax Commission has not carried out its duty of assembling data necessary to equalize assessments, it is not possible to determine exactly the measure of inequality under which they suffer,

and they indeed are not asking for money damages or return to them of taxes illegally collected, but simply that the inequality be stopped. **Complainants have established that their right to equal protection, under the Fourteenth Amendment of the United States Constitution, has been violated** as well as their right to equality of treatment provided under Section 112 of the Mississippi Constitution and the implementing statutes thereunto. It appears to this Court that the Complainants (not the attorneys, individually, who are being paid by the Complainants) are entitled to reimbursement of costs and attorneys' fees as provided for under state and federal statutes in such cases. A hearing will be held at a later and more appropriate time for the determination of such.

Section 112 of the Constitution of the State of Mississippi says that property shall be taxed in proportion to its value. Properties shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its value. Value as stated in this constitutional section has been spelled out by the Legislature to mean true value or what amounts to market value. Section 27-35-49 of the Mississippi Code of 1972 defines this to be "what the owner would be willing to accept and would expect to receive for it if he were disposed to sell it to another able and willing to buy." Code Section 27-35-49 provides that it is the duty of the tax assessor to assess all land in the county at its *true value.* Code Section 27-35-87 says, among other things, that the Board of Supervisors shall hold a meeting for the equalization of assessments, shall examine the roll or rolls, shall cause to be assessed any person or thing which is found to be omitted, and *anything found to be undervalued* may be *correctly valued.* Therefore, if the tax assessor does not assess the property at true value, the Board of Supervisors can correct it to true

value. Code Section 27-35-113 provides that it is the duty of the Mississippi State Tax Commission to carefully examine the recapitulations of assessment rolls of the counties, to compare the assessed valuation of the various classes of property in the respective counties, to *investigate and determine if the assessed valuation* of any classes of property *in any one or more counties* is *not equal and uniform* with assessed values fixed upon the same classes of property *in other counties* of the state, *to ascertain* if any class of property in any one or more counties is *assessed for less than the true value of the property.* Said code section further provides that the Commission has the authority to *adjust* and *equalize* the *assessed values* and to *require* that *property be assessed generally at its true value.* It further provides that the Commission may require a fixed percentum to be added to the assessed valuation of any class of property in any county found too low or deducted from the assessed valuation of any class of property found too high. It goes on to say that this is all for the purpose of carrying out the constitutional mandate that the assessment of the various classes of property in the several counties of the state be reasonably *equal and uniform* throughout the state and that *all property in general shall be assessed as nearly as possible at its true value.* **It is obvious from the reading of this code section that the Legislature did not intend to prevent the Mississippi State Tax Commission from carrying out its duties of requiring reasonably equal and uniform assessments throughout the state and requiring all property in general to be assessed as nearly as possible at its true value by limiting it to the sole and only power of adding a percent or taking away a percent of the reported assessed valuations as shown on the recapitulation of assessment rolls of the counties.** The Commission has throughout the conduct of this case maintained that contention. **But for this contention to have any valid-**

ity, one would have to say that the words beginning the second sentence of Code Section 27-35-113, to-wit, "The Commission shall have authority to adjust and equalize the same and to require property to be assessed generally at its true value, . . ." do not mean what they say in the usual obvious English meaning of the words. Thereafter in the same sentence, the Legislature went on to express that, "and to that end, either, may require a fixed percentum (1) be added to the assessed valuation of any class of property in any county, found too low; or (2) to be deducted from the assessed valuation of any class of property found too high;" and here we see that the word "may" was used instead of the words "shall only." **Had the words "shall only" been used, the Legislature would have clearly indicated that this was not permissive but mandatory and limited. On the other hand, since the word "may" was used, and in context with the rest of the section and the other sections of the Code and the Constitution, it is clear that the Legslature intended that the two alternatives may be followed, along with any other lawful activity of the Commission to that end. The same sentence goes on to say what the whole idea of the section is, and clearly spells out a broader power and duty on the part of the Commission than is maintained by the Commission in this suit. The Commission has many powers other than raising or lowering percentages of valuations of property in order to achieve equal assessments uniform in nature at true value.**

The Mississippi State Tax Commission has power and authority to carry out the mandates of the Constitution and statutes. It may very well be that additional powers or appropriations would be needful and helpful. This is a matter, of course, for the Legislature to determine. **This Court cannot and will not impose its own ideas upon the**

Commission or the Legislature and cannot and will not order or direct the Commission to do anything which it is not already empowered under the law so to do.

Property in the State of Mississippi must, for ad valorem tax purposes, be valued at true value. The Constitution and statutes unequivocally mandate this. Value or true value means 100 percent total value. The statute clearly sets out that value, true value or market value, means what a reasonable purchaser not forced to purchase will pay and what a reasonable seller not forced to sell will take for a piece of property. **The Constitution and statutes provide that assessment for tax purposes may be at some proportion or percent of true value, but this must be uniform. Therefore, the Mississippi State Tax Commission not having been delegated the authority to determine fractional assessments, only the Legislature of the State of Mississippi can determine if the constitutionally permitted practice of assessing at something less than true value for various classes of property will be allowed, and if so, in what specific percentages this may be done.** Only in this way can there be uniformity of treatment of owners of various classes of property throughout the State of Mississippi. The Legislature has not yet seen fit to do this.

Without authority, although its motive has been pure, this has been done to some extent by the State Tax Commission by using 30 percent and urging every other taxing authority in the state to use 30 percent. But the various counties, in an infinitely varying proliferation of percentages, have created a monster in this area of taxation. By and large, the vast majority of the problems created by the necessity for the order of this Court, in this regard, may be easily allowed for by the adjustment of millage rates in the various districts and counties. It is greatly to be hoped that in the other areas that call for considera-

tion by the Legislature that the Legislature in its own good judgment will do what it deems to be necessary and desirable for the people of the State of Mississippi. It is obvious that something will be needed in the way of adjustments in the Homestead Exemption area. The Legislature has many courses available including increasing the exemption to cover the actual value of the homes intended to be exempt and partially exempt or to provide for a lower percentage of true value for the assessment of property in this particular class. It is obvious also that the statewide millage rates of 4 mills could be reduced so as to produce approximately the same amount from true value as it has from the existing levels.

Defendant Pugh, who has been allowed to join as a party to this suit, has asked the Court to prevent Boards of Supervisors from taking advantage of increased assessments at 100 percent of true value to raise outlandish amounts of tax money and to place a limit of 5 percent on the amount of increase in tax collections which the Board of Supervisors could provide for under these circumstances. **This Court has said from the beginning that it would not invade the province of the Legislature. This Court will not invade the province or prerogatives of the people either. The determination of the level of expenditures in the various counties is left to the judgment, in its legislative capacity, of the Board of Supervisors. This is democracy at its finest. The money which is raised by taxes at the local level in the counties on a millage rate determined by the Board of Supervisors is spent in the county for the uses of the local citizens of the county. If the Board of Supervisors, in the exercise of its legislative function of determining the level of those expenditures, reaches too high and spends too much money, the electorate of the county, the individual voters, who are close enough to**

their supervisor to know him and to know what is being spent and to have their own idea as to whether it is reasonable or not, can and do express at the polls their assent or dissent to the judgment of the supervisors. In a time when state government has largely gone to sales taxes for revenue and the federal government has largely gone to income tax and other taxes for its revenue, it is appropriately democratic that ad valorem real and personal property taxation is largely within the province of the counties where it is responsive to the will of the people upon whom the money is being spent, and is under circumstances which permit them to have reasonable and adequate control thereof. The people of the individual counties in the State of Mississippi do not need this Court or anyone else to help them in the exercise of their judgment as to whether or not the supervisor is spending too much money or not.

Everyone knows that the raising of assessments, by and large, does not raise taxes. This should be crystal clear. The supervisors in a county first determine how much money it will take to run the county. They set the budget for the county. Then they divide that total amount of budget into the assessed valuation, total of assessed valuation for the county, and from this there comes the millage rate, in other words, the amount or percent of property owned by each taxpayer that it will be required for him to pay to pay his fair share in order to raise the amount of money needed for the county.

The testimony of an official of one county which had recently undergone reappraisal was that there was no real increase in taxes. Some more property went on tax rolls and people's taxes went down.

The experts generally agreed that about 30 percent of taxpayers would pay less than before reappraisal, about

40 percent would pay the same and about 30 percent would pay more. Some said this would be 33-1/3 percent for each group. In any event, this means that upon equalization of assessments at true value, there is a 66-2/3 to 70 percent chance that a taxpayer's share of the tax burden will stay the same or decrease. Thirty percent to 33-1/3 percent of taxpayers, those who are not bearing their fair share now, will have their taxes increased up to what is their fair share.

And who has the right to complain about this.

This Court is grateful to the Supreme Court of the State of Mississippi for its guidance in this case. The Fondren case has already been to the Supreme Court on demurrer. This Court was overruled and the case sent back to this Court for trial of the case. We have carefully consulted "First Fondren" chapter and verse. The Supreme Court of the State of Mississippi said in that case, which is cited as *Fondren v. State Tax Commission,* 350 So. 2d 1329, "Certainly, the chancery court would have the authority to enjoin the approval of the assessment rolls, which would result in the State's inability to collect its taxes." It also stated "The mandate of Section 112 of the Constitution is plain. The Commission's duty to enforce the mandate of Section 112 is equally plain." The Court further said that if Fondren can prove the constitutional and statutory violations he alleges he will be entitled to relief. **I have never seen any case before me which has been more thoroughly prepared or one in which the allegations were more completely proved.** Witnesses working for the Commission itself, staff personnel in charge of the very duties involved, **freely admitted that they could not actually equalize assessments** based on the standard set out in Section 112 of the Mississippi Constitution requiring valuation on the actual or true value, as also set out in

the statutes, **because the Commission did not have the information as to what the true value of property was.** The Commission, although having the authority to establish the forms on which recapitulations of tax rolls were reported to the Commission, has never prescribed a form which required a showing of true value of property in the counties. Testimony of tax assessors and supervisors clearly indicated that in the vast majority of cases true value of property has not been determined in the counties of the state. There are a few counties in which a complete revaluation has recently occurred but there are indications that even in some of these that failure to annually update the valuation of property has allowed some of these re-evaluation efforts to have become considerably eroded.

It needs must follow that the Mississippi State Tax Commission must be enjoined from approving any recapitulation or tax roll which is not based, as nearly as is reasonably possible, upon 100 percent true value, unless the Legislature has prior to the effective date of the injunction provided some uniform method of valuation of property in a class or certain classes of less than 100 percent. No ad valorem taxes can be collected without this Commission approval.

Before moving further into what needs to be done and without any intent to superimpose the ideas of this Court on the Legislature but again having heard perhaps the most intensive inquiry into the field of assessments of property for tax purposes thus far had in this state, I believe I would be remiss if I did not at least relate the following. Some states require that all assessments must be at 100 percent of true value, while other states permit classification of property with established percentages of true value of less than 100 percent in order to favor certain

classes of property or for making the edge of taxation sharper against one class of property than another. One of the witnesses in the case before us, a young banker with outstanding qualifications in economics and banking with his primary duties relating to the valuation of farm property for bank loans and with the right to approve the loans for the bank or to help the bank in determining whether or not to loan the money or not, freely admitting that the land in his county was not uniformly assessed at true value and that widespread inequities appeared, was then asked about his own home property, his residence. He stated that he knew that his residence was assessed at $5,000, a fraction of the value of his property, and which incidentally happens to be valued at the exact upper limit for Homestead Exemption. He was asked if he had ever complained about it being too low and he stated that he had not. He did state, though, that he had complained about it being too high, in relation to other homes which he knew to be of a greater value. When asked if he had made a formal written protest about his property being valued at a higher amount than other property of similar value for assessment purposes, he exclaimed that he had not. After all, his property was only valued at $5,000, a fraction of its true value, and, therefore, he was willing to let sleeping dogs lie. It is clear to this Court that this is the explanation for the obviously small number of actual protests lodged against assessments before the Board of Supervisors of the various counties or complaints registered with the tax assessors of the various counties. Most people are afraid their property would only be increased in value if "they rocked the boat." **Most people do not understand fractional assessments and are willing simply to "let sleeping dogs lie." Fractional assessments have been used by the politically wise to shroud with mystery any possibility of comparison by the ordinary**

taxpayer of the assessed valuation for his own property with that of the assessed valuation of any other property of similar nature. Board of Supervisors have for years made a mockery of the millage limits placed by the Legislature on county operations, by simply raising the assessed valuations to provide more tax money without increasing millage. In order to proceed on the basis of 100 percent valuation at true value of property in this state as the law and constitution require, adjustments would need to be made by the Legislature in several areas, such as Homestead Exemption, statewide tax levy and perhaps others. The Legislature, though, has the judgment to make. Should it determine to do otherwise and permit fractional assessments to be made, then it, the Legislature, is the only source for setting out at what levels the various classes of property should be assessed. It is to be hoped that the Legislature will make this determination of which course to follow at the earliest reasonable opportunity.

The State Tax Commission has to know the true value of property located in the various counties of this state regardless of whether the assessment levels are at 100 percent or a fraction of 100 percent. The only way to know that property is being assessed at 30 percent of true value, or some other percent, is **to first know what true value is.** After having determined what true value is, a percentage may be taken of that, if that is determined by the Legislature to be the best course. But in any event, **true value must be known.** The Commission must then require that true value be reported to it in the recapitulations and in the tax rolls. True value cannot be reported to the State Tax Commission **unless it is determined in the counties throughout the state. The Commission is under a duty, a statutory duty, to determine what the value of property is throughout the state.** A great deal of authority already lies in the hands of the Commission. It is the arm of the State in

carrying out the mandates of the Constitution, Section 112. It can lead, it can instruct, it can assist, and **it can require that true value be reported to it.**

Every expert that testified emphasized the necessity for having a good mapping system in order to know for sure that all land in a county was on a tax roll and for the proper valuation of that land. The Legislature has heretofore recognized this need and required that Boards of Supervisors supply maps for this purpose to tax assessors. Mr. Guy Blankenship, Jr. testified that maps are the backbone of a good assessing system but that only about half of the counties have good maps. Thirty-one counties have no maps and only about 20 counties actually meet minimum Mississippi State Tax Commission specifications.

The ultimate harsh and hopefully not to be needed authority rests in the Mississippi State Tax Commission to proceed against the tax assessor or members of the Board of Supervisors or anyone else in the assessment process who fails to carry out their duties under the law. Section 27-3-33, Mississippi Code of 1972.

Supervisors are under a duty to furnish proper maps to the tax assessors. Tax assessors and the Board of Supervisors are under a constitutional duty and a statutory duty to value the property required to be assessed at its true value.

It was apparent throughout the testimony in the nearly three weeks that we heard this case that the staff of the State Tax Commission is very capable and sincerely desirous of assisting the county officials in the tax assessment and collection process. By the same token, the county officials have uniformly commended the staff of the State Tax Commission on its ability and helpfulness. There

is no reason whatsoever to expect that anything other than the finest sort of cooperation will be exhibited both on the part of the staff of the Tax Commission and the local officials of the various counties. To paraphrase the words of Admiral Lord Nelson, Mississippi expects each of her officials at the county level as well as the state level, to do their duty. She can demand no more. She can expect no less.

The State Tax Commission has through its staff already compiled excellent manuals and made them available to tax assessors and supervisors throughout the state. Forms need to be prescribed promoting uniformity throughout the state whereby the tax assessor in establishing his assessments most show true value on all parcels of propperty. Standards for determining true value must be prescribed in order that there be uniformity and equality. **No tax statement should go out to a taxpayer without a provision on the face of it showing true value of the property** as well as assessed value and in the event the assessment is at a lesser figure than the true value that a statement be shown on the face showing that this particular property is of a classification or class of property which is lawfully assessed at a certain percentage of true value. The taxpayers are entitled to this information. It is, of course, obvious that all of these things cannot take place overnight. It appears to the Court that five years is a reasonable period of time to allow for the implementation of this order, in order to avert the problems which our sister states have encountered. Mr. Blankenship, Director of the Equalization Division of the Mississippi State Tax Commission, is an expert in his own right and Mississippi is most fortunate in having a man of his caliber in the Department or Division of Equalization. He stated that he was told, when he went with the Commission, to prepare for equalization, whether it came by legislative or judicial

edict. The Court recognizes that if he is, and his division is, given the support they need and deserve, the equalization process in this state will not only be in good hands but will progress to a successful and early high level of achievement. This level should approach as close as human beings can to the perfection required by the statute and the Constitution. The Court recognizes that, as a practical matter, it will take this much time to implement its decree which would then require that the time beyond which the State Tax Commission would no longer be permitted to accept recapitulations of tax rolls not based on true value is 1983. This would give them more than four years. By July 1, 1983, it would seem reasonable that all of the taxing and assessment districts in this state will have had the opportunity to determine the true value of each parcel of property in their county or district and proceed to place the assessed valuation at either 100 percent of that true value or, at such percent, if any, as the Legislature may have otherwise determined, based upon true value. We do recognize that this time schedule does not allow for delay.

Nothing herein is intended to indicate that this Court is by any means suggesting or requiring that mass reappraisal and revaluation of property be accomplished in a crash program requiring tremendous contracts with mass appraisal firms. Nothing could be further from the intent of this Court. It may very well be that in some counties it would be to the advantage of the county to hire outside appraisers or appraisal firms to perform the function of revaluing or determining the value of property by accepted standards to determine the true value of each parcel of property in the county. On the other hand this Court was very much impressed by the experience in the State of Louisiana and the recommendation of Mr. Charles R.

Hennington, the expert and highly qualified assessor from Shreveport, Caddo Parish, Louisiana. His recommendation was against hiring mass appraisal firms to come in and do the work, stating that in Louisiana their tax commission supervised, trained and assisted local tax assessors in doing their own revaluation of property to determine true value and that he saw no reason why Mississippi could not do the same at a much less cost and in a much more acceptable and desirable way. This Court will not interpose its own judgment in this matter as to the method since it does appear that the equalization staff of the Mississippi State Tax Commission has the knowledge, expertise and capability of devising and implementing a plan for the valuation of property throughout this state at true value for assessment tax purposes in a manner which will be economical, conservative in time, and efficient in product, in order to accomplish the ends required by the statutes and constitution of this state. It would appear that the Mississippi State Tax Commission could and should be required to prepare a master plan for the implementation of equalization and to report this plan to the Court by May 1, 1979 or at such earlier time as it may be ready. Because of the considerable time that the Court recognizes that is necessary in the total implementation of its order, the Court is desirous of having an annual report on or before July 1 of each year through 1983 as to the progress which is being made. That the staff experts of the Commission will do an excellent job for their fellow citizens in this regard, the Court feels absolutely certain. There is nothing in any of the testimony of the tax assessors or other witnesses which would indicate that there will be anything less than complete cooperation on the part of all of the tax assessors and other county officials involved as well as the state officials also involved.

When men stop to count the cost before deciding to do "right", it may well be too late to matter. The Court is not unmindful of the fact that there will be expense involved in this matter. Had it been done a few years ago, the cost would have been much less. *Delay can only greatly increase the cost.* It certainly should be held to the lowest level possible while at the same time accomplishing the result required by the statutes and constitution. I feel sure the Mississippi State Legislature will rise to the occasion as it has always where the interests of the state are at heart and will provide the resources needed, assist the counties as they need, and cooperate in the plan which will be proposed by the Mississippi State Tax Commission. Few tasks could be more noble in their character or more worthy of support than this which will lead to the equality of treatment for the citizens of Mississippi required by the Fourteenth Amendment to the Constitution of the United States of America, by Section 112 of the Mississippi Constitution, and by Sections 27-35-113, 27-35-115, and other sections, of the Mississippi State Code of 1972. The worthy goal will inspire worthy planning and support.

The Mississippi State Tax Commission should forthwith require forms to be issued which would require the local counties, tax assessor and Board of Supervisors to make their reports including the recapitulation reports and tax rolls showing the true value. We realize, nevertheless, that it will be impossible, as a matter of equity, to require the Commission to fully equalize as is required, any earlier than the date already specified.

Facing the possibility of equalization at 100 percent of true value the voters of the State of Mississippi will no doubt, in this election year, require of its elected officials assurance of fiscal responsibility and that there will be

no undue tax increases simply because of a broader base for taxation. There need not be, except for the continuing onslaught of inflation which besets Boards of Supervisors as well as legislators.

This Court is not ordering and will not order the Mississippi State Tax Commission to do anything that it is not already under a duty to do, but the Commission simply must assume the leadership role which the statutes confer upon it and lead out innovatively, efficiently and energetically to bring about the equality of assessments to which the taxpaying citizens of the State of Mississippi are entitled.

The objections of the Mississippi State Tax Commission with regard to revivor are not well taken. This Court has full jurisdiction of the necessary parties.

A decree may be presented to the Court in accord with this opinion which will, in brief summary, provide that:

(1) The Mississippi State Tax Commission be enjoined from approving any county's recapitulation of assessment roll, or assessment roll, which is not based, as nearly as possible, on true value, beginning with the 1983 assessment rolls.

(2) True value means full or 100 percent of true value, unless the Legislature has by then enacted laws specifying lesser percentages for certain classes of property.

(3) The Mississippi State Tax Commission shall prepare and present to the Court not later than May 1, 1979, its plan for assisting the counties to determine true value of their taxable property in time for the submission of recapitulations of assessment rolls in 1983.

(4) The Commission forthwith revise its forms for submission of recapitulations so as to require true value of taxable property to be shown.

(5) The Commission forthwith begin, by use of sales to assessment ratio studies, and any other lawful means, to carry out its duty to ascertain the true value of property in this State.

(6) The Commission shall carry out its constitutional and statutory mandate to provide the Complainants and all the other taxpayers of this state with assurance that assessments in each and every county will be reasonaby equal and uniform throughout the state and that all property in general shall be assessed as nearly as possible at its true value.

/s/ James Arden Barnett
Chancellor

APPENDIX D

IN THE
CHANCERY COURT OF THE FIRST JUDICIAL
DISTRICT OF HINDS COUNTY, MISSISSIPPI

NO. 105,131

J. C. REDD, et al.
COMPLAINANTS

vs.

THE STATE TAX COMMISSION OF THE STATE
OF MISSISSIPPI, et al.
DEFENDANTS

and

NO. 96,159

LOUIS FONDREN, et al.
COMPLAINANTS

vs.

THE STATE TAX COMMISSION OF THE STATE OF
MISSISSIPPI, et al.
DEFENDANTS

SUPPLEMENTAL OPINION

(Filed April 4, 1979)

After the hearing had been completed on the merits of this case and an opinion rendered by the Court, an additional hearing was held on the matter of attorney's fees which had been prayed for by the complainants. The Court had held in its original opinion that complainants were entited to attorney's fees and provided that a hearing would be held later to determine the amount. However, the Court did ask the attorneys to present additional argu-

ments as to the advisability of attorney's fees as well as to the amount.

At the hearing complainants offered evidence that they had used attorneys on this case at $30.00 to $50.00 per hour for a total of about $75,000.00 worth of attorneys' time plus about $10,000.00 in out of pocket expense and about $9,000.00 in expert witness fees, for a total of some $94,000.00.

It appears that the complainants themselves actually contributed into the fund which has been used to pay the attorneys for complainants only about $450.00 in cash. That three of them signed a note for $20,000.00, and that the rest that has been spent or paid to the attorneys had been raised by contributions from various and sundry individuals and groups. Records had been kept, as to who contributed what, in order that refunds to them could be made if that became possible.

As I understand the case law, it does not make any difference what was actually spent in hiring the attorneys to do the work, whether any money was spent in hiring the attorneys to do the work, or who paid for it, or who would get it back if the Court awards attorneys' fees to the complainants. In this particular case affidavits have been filed by the complainants to the effect that any moneys awarded by the Court on attorneys' fees and collected by the complainants would be used to first pay any current attorneys' fees or expenses and the balance then to repay pro rata those who had made contributions.

The Court is not bound by what attorneys are paid by their clients in determining what attorneys' fees reasonably should be, but has the discretion to determine what it thinks attorneys' fees allowed should be.

This particular case is one which falls within the purview of 42 USC Section 1988 which provides for attorneys' fees to be paid as part of the court costs to the prevailing party except that it provides that the United States shall not be paid any attorneys' fees when it prevails. This means that the Tax Commission and Attorney General's office could be paid attorneys' fees should they prevail in this case regardless of the fact that the attorneys representing the defendants are all salaried and were not working as such for fees in this cause.

Complainants in filing this suit invoked 42 USC Section 1983 which provides for concurrent jurisdiction by state courts with federal courts over claims for violations of rights protected by the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.

By virtue of this, and under the authority of 42 USC Section 1988, as the prevailing party, the complainants are entitled to attorneys' fees. Mississippi also has a code section which provides for attorneys' fees to be awarded in class action suits, which this case is. But it is not clear as to whether or not it would, in this particular suit, authorize payment of attorneys' fees. The section of the state law provides that the attorneys' fees may be awarded "out of the sums recovered or preserved" or words to that effect. The suit at bar is not for recovery of sums for the complainants, although in a sense it does "preserve" funds in that it would prevent them from in the future being taxed unfairly as a result of tax assessments which were not lawfully made or properly determined.

There is present in this case the anomalous situation which faced the Attorney General's office. The Attorney General was required by law to see that the laws of the State of Mississippi are enforced. If the State Tax Commission was not following the law, it was the duty of the

Attorney General's office to see to it that all measures were taken which it could take to bring about compliance with the Constitution and state law by the State Tax Commission. On the other hand, the Attorney General's office was also charged with representing the State Tax Commission in suits filed against it.

It appeared to this Court that **there was little in the way of controversy about the duty of the State Tax Commission to require that all property be assessed at its true value. The Constitution and code sections are clear in this regard.** The witnesses all seemed to agree likewise. Mr. Douglas speaking for the Attorney General's office and the State Tax Commission in final argument **agreed that the State Tax Commission was under a duty itself to determine** through sales ratio studies or other methods **what true value was for property throughout the state.** The testimony **clearly indicated that the State Tax Commission had failed since 1916 when the law was originally passed to carry out its duties.** When the taxpayer group requested the Attorney General's office and the State Tax Commission to take the action required under the Constitution and code sections, it declined so to do, stating that its position was that the only thing that the State Tax Commission could do was to equalize, after the percentage required of the recaps of county assessment rolls had been filed, by telling a county to increase or decrease by a fixed percntage its assessments in order to bring about equalization. All witnesses agreed that this could not possibly bring about equalization of assessments at true value as required by the Constitution and code sections, since the State Tax Commission, which had the authority to prescribe the forms used to report tax assessments from the various counties, did not even require that *true value* of the assessed properties be shown in its report. Therefore, there was no way to equalize assssments at true value. **So when**

the taxpayers presented the issue, the Attorney General's office elected, in good faith, instead of proceeding against the Tax Commission to require its compliance with the law, it elected to vigorously defend the State Tax Commission and the present suits were filed.

It does not seem right that it should be necessary for individual citizen taxpayers to have to foot the bill for suits to be filed to require the taxing authority of the state to obey the provisions of the Constitution and state laws. And when no alternative was left except so to do, it does not seem equitable, if there is a way to prevent such inequity, to require that all this expense be borne by those public spirited taxpayers representing the class. Under our state law no fee award would be made. However, under the federal statutes, this Court has no alternative but to award attorneys' fees to the complainants.

This Court is not unmindful that it is possible to use this type of authority to encourage "leaf flipping" and "rock turning" in such areas and is therefore **inclined to be extremely conservative in its approach toward awarding attorneys' fees under these circumstances.**

There is no doubt in the mind of this Court that if there ever was a case in which attorneys' fees should be provided, it is the case at bar. It is a classic situation where individual taxpayers must seek the aid of the Courts in preserving the civil rights guaranteed to these taxpayers, to all taxpayers, by our Constitution of the United States, our Constitution of the State of Mississippi, and the code sections of the state law of Mississippi as passed by the Legislature. As this Court understands the case law and the provisions of 42 USC 1983 and 1988, this Court has no alternative but to provide for payment of attorneys' fees as part of the cost of court to the prevailing parties.

This has been a monumental case. It required some three weeks of trial before this Court in addition to other matters in the way of motions being heard prior to and after the actual days of testimony in court. Upwards of fourscore witnesses were heard in the court. Complainants were represented by two very capable and diligent attorneys. The defendants were represented by three very capable and diligent attorneys who were in attendance on all of the trial days as well as pretrial motions and post trial motions and arguments, as were the two attorneys for the complainants. In addition to this, there were several other attorneys for the Tax Commission and Attorney General's office who had some involvement in the case or at least were in attendance from time to time.

Having full regard for all of the elements, as set out in the applicable U.S. Fifth Circuit cases, that should be by the Court considered in establishing a reasonable fee for attorneys handling the cause for complainants and the cost and expense of preparing and carrying out the trial of the case for complainants, the Court in its discretion determines that the sum of $58,000.00 should be paid by the State Tax Commission members in their official capacities, and their successors in office, from the funds available to the said State Tax Commission to the complainants as part of the costs of court in this proceeding, which will of course be due and payable when this case is finally concluded.

Now in response to the request by the defendants for special findings of fact filed herein, the Court finds as follows:

(a) This is a civil rights case as I understand the use of that term by the defendants.

(b) The Court is vested with jurisdiction of this cause under 42 USCA 1983.

(c) 42 USCA 1988, the federal Civil Rights Attorney's Fees Award Act of 1976, does indeed apply to state court in this particular cause.

(d) The State Tax Commission is a person within the meaning of 42 USCA 1983, but even if the Court is incorrect in this regard, nevertheless, the other defendant members of the State Tax Commission and their successors in office in their official capacities are persons within the meaning of said law.

(e) The defendants do not have either full or qualified immunity under the 11th Amendment and/or federal and state decisions from the award of attorneys' fees.

(f) The State of Mississippi and the State Tax Commission have not waived any immunity by its appearance in this Court and the defendants in this cause did not have immunity.

/s/ James Arden Barnett
Chancellor

APPENDIX E

IN THE
CHANCERY COURT OF THE FIRST JUDICIAL
DISTRICT OF HINDS COUNTY, MISSISSIPPI

NO. 105,131

J. C. REDD, ET AL.,
COMPLAINANTS,

vs.

THE STATE TAX COMMISSION OF THE STATE OF
MISSISSIPPI, ET AL.,
DEFENDANTS.

NO. 96,159

LOUIS FONDREN, ET AL.,
COMPLAINANTS,

vs.

THE STATE TAX COMMISSION OF THE STATE OF
MISSISSIPPI, ET AL.,
DEFENDANTS.
[Consolidated Cases]

DECREE

(Filed May 9, 1979)

THESE CONSOLIDATED CASES came on for hearing on their merits in open Court during the regular September 1978 term. Trial was held in this Court from October 16, 1978, until November 2, 1978. Final arguments were heard on December 12 and 13, 1978. On February 12 and 13, 1979, further evidentiary hearings were conducted on the issue of the award of attorneys' fees and a Supple-

mental Opinion which addressed those issues was rendered on April 4, 1979. The Court finds that it has jurisdiction over the parties and the subject matter. Based on the pleadings, evidence received thereon, the arguments made to the Court and for the reasons stated in the Opinions of the Court filed January 5, 1979, and April 4, 1979, in the records of these cases, it is

ORDERED, ADJUDGED AND DECREED:

(a) That, beginning with the 1983 tax rolls, and continuing with respect to the tax rolls for each successive year thereafter, the Defendants, their commissioners, officers, and agents, and specifically their successors in office, should be, and they hereby are, absolutely and unequivocally enjoined and prohibited from accepting or approving the tax rolls of any county, or the recapitulation reports drawn therefrom, unless all real and personal property subject to ad valorem taxation within the county shall have been valued and assessed as nearly as possible at its true value, it being expressly provided that the term "true value" means full or 100% of true value, unless the legislature has by 1983 enacted laws specifying a lesser percentage of true value for the determination of assessed value;

(b) That the Defendants, in their official capacities, their successors in office, their agents, servants and employees, and all persons acting in concert with them, shall be, and they hereby are, enjoined in the performance of the duties imposed upon them by law, beginning with the date of the entry of this Decree, acting within the scope of and under the authority of their powers and responsibilities as set forth in the statutes and laws of the State of Mississippi, to take such steps as may be reasonably necessary to require and assure, beginning with the 1983 tax rolls,

(1) that, all property subject to property taxation by the counties in the State of Mississippi shall be valued, appraised and assessed at its true value, taking into consideration the improvements thereon and all conditions or circumstances that tend to affect the value thereof. The determination of true value shall include whenever possible, a full consideration of the market data approach, the cost approach and the income capitalization approach to value. True value shall be determined and applied in accordance with generally accepted mass appraisal principles and standards, and in accordance with the rules, regulations, manuals and procedures of the State Tax Commission;

(c) That, beginning with the 1980 tax rolls of the various counties in the state, the Defendants, acting under the authority vested in them by Section 27-35-111 of the Mississippi Code of 1972, shall require the tax assessors and boards of supervisors of the several counties to submit their recapitulation reports on new forms reasonably designed to provide sufficient information to enable the Defendants to perform their statewide equalization functions; provided, however, that such forms must include for each class of real and personal property subject to taxation in the county:

(1) the aggregate true value of all property in each class in the county to be filled in when evaluation at true value is complete or no later than when the 1983 tax roll(s) [recaps] are submitted.

(2) the aggregate assessed value of all property in each class in the county;

(d) That, in addition to the foregoing, beginning with the 1980 tax rolls of the various counties of the state,

the Defendants, acting under the authority vested in them by Section 27-35-25 of the Mississippi Code of 1972, shall require that the tax assessors and boards of supervisors keep and maintain tax rolls on forms which include any provisions deemed reasonably necessary and appropriate by the Defendants; provided, however, that each such county tax roll and the form on which such tax rolls are maintained, must include for each item or parcel of property in the county subject to taxation, real personal or mixed:

(1) the true value of such item or parcel of property;

(2) the aggregate true value of all property in each class in the county to be filled in when evaluation at true value is complete or no later than when the 1983 tax roll(s) are submitted;

(3) the assessed value of such item or parcel of property; and

provided, further, that no tax receipt should go out to a taxpayer without a provision on the face of it showing the true value of the property as well as assessed value;

(e) That, in addition to the foregoing, the Defendants, shall forthwith begin, by the use of sales to assessment ratio studies, and by any other lawful means, to carry out their duty to ascertain the true value of property in the State of Mississippi, and the ratio of assessed value thereto, and to determine if the assessed valuation of any classes of property in any one or more counties of the state is not equal and uniform with the assessed values fixed upon the same classes of property in the other counties of the state, and to ascertain if any class of property in any one or more counties is assessed for either more or less than the true value of the property;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

(f) That, on or before forty-five (45) days from the date of entry of this Decree, the defendants will prepare in written form and file with the Court a long range master plan reasonably designed (1) to assure that on or before July 1, 1983, the true values of all properties subject to taxation by the counties in the State of Mississippi will have been established and placed upon the tax rolls of each of the eighty-two (82) counties in the State of Mississippi and (2) to eliminate on or before July 1, 1983, the discrimination and inequities in assessments currently existing within the State of Mississippi, and within the various counties and within, between and among the various classes of property within the State of Mississippi. Said plan will include, inter alia,

(1) a thorough and detailed time table for the accomplishment of the objectives of the plan, i.e. full compliance with subparagraphs (a), (b), (c), and (d) above;

(2) a set of guidelines, procedures, and specifications, consistent with the statutes and laws of the State of Mississippi and with the other terms of this Decree to be utilized by the several counties in their reappraisals, and with which the counties must ultimately comply in the establishment of the true values of properties within their respective jurisdictions and subject to taxation, whatever methodology for valuation and reappraisal the respective counties may select;

(3) a statement of alternative methodologies which the State Tax Commission recommends that the counties consider as means of achieving the end of establishing the true values of all properties within

each county. The State Tax Commission shall specifically include as one of its recommended methodologies a detailed description of a plan by which the counties can conduct reappraisal by utilizing the "in house" method. That is to describe the means by which a county may conduct and implement a reappraisal through the local assessing officials utilizing local personnel and working in concert with private consultants or personnel of the State Tax Commission who shall provide the technical assistance necessary for a county to carry out such a reappraisal. Whatever methodology is selected by the particular county, the end result must be the establishment of the true values of all properties subject to taxation within that county for the 1983 tax rolls in compliance with generally accepted mass appraisal principles and standards, and in accordance with the regulations, guidelines, and criteria as may be established by the State Tax Commission and to the end that each county can select the methodology at the maximum economy and least expense.

(4) a statement of guidelines, procedures and criteria to be used by the counties in evaluating the qualifications and capabilities of any mass appraisal firms bidding on reappraisal contracts;

(5) a statement of safeguards to be recommended to the counties desiring to contract with independent mass appraisal firms designed to assure that, once reappraisal contracts are let, the contractor will complete the work competently and timely;

(6) a description of technical services and assistance to be made available by the State Tax Commission to the county tax assessors and to the boards of supervisors, including those services which will be

made available to the counties which will enable a county to conduct reappraisal by the "in-house" method;

(7) an auditing procedure to be utilized by the State Tax Commission in evaluating and investigating the annual recapitulation reports of the county tax assessors and boards of supervisors for the counties as they complete their reappraisal programs;

(8) a statement of whether or not it is feasible to implement the terms and provisions of any paragraph of this Decree earlier than the projected target date;

(9) a statement of procedures and remedies to be utilized and invoked against the counties and/or county assessing officials failing or refusing to perform their duties, specifically including the manner in which defendants plan to utilize the powers vested in them under Sections 27-3-31, *et seq.*, 27-35-25, -111, -113, -115, -117, and the general powers of Sections 25-1-45 and 97-11-11;

(10) plans for periodically conducting sales-assessment ratio studies within the several counties and within selected classes of property in the several counties, and, in this connection, plans for requiring that each local assessor periodically collect and report such sales and assessment data as the Defendants may deem appropriate;

(11) plans for assuring, once the true value of all taxable properties within each county has been established on the tax rolls, that such tax rolls will thereafter be periodically updated and maintained to the end that a complete revaluation of all properties within the county will hopefully never again be re-

quired to the further and continuing end that equalization may exist within and between the several taxing jurisdictions of the state from year to year in compliance with the constitution and laws of the State of Mississippi, in accordance with the rules and regulations of the State Tax Commission, and in conformity with generally accepted mass appraisal principles;

(12) a statement of how insofar as possible either the State Tax Commission or the individual county assessors and any other assessment officials, local and state, may engage in cooperative programs with and utilize the facilities, resources and expertise of the Mississippi Research and Development Center, the Mississippi Agricultural and Forestry Experiment Station, the Mississippi Cooperative Extension Service, the Mississippi Central Data Processing Authority, and any other state agencies, including the several colleges and universities of the State of Mississippi;

(13) a statement of how the educational programs and services offered through the International Association of Assessing Officers, and/or any other organizations or educational institutions having experience and expertise in the valuation and assessment of property for ad valorem tax purposes, may be utilized in the upgrading of assessing capabilities within the local assessing offices in Mississippi;

(14) Such recommendations as the Commission may choose to make, in accordance with its duties under Section 27-3-49 of the Mississippi Code of 1972, as amended, for changes and alterations in the ad valorem tax laws of the state as, in the judgment of the Commission, may be necessary or appropriate to bring about a more perfect, equitable, adequate, just and thorough system of taxation and valuation of prop-

erty for state and county taxation (including recommendations regarding staff authorizations and appropriations, and both the state and county levels);

(15) such other provisions as Defendants may deem reasonably necessary to implement the terms and provisions of this decree and to achieve the end of true property tax equalization, and the periodic maintenance and update thereof.

(g) That, contemporaneous with the filing thereof, copies of this plan shall be delivered to counsel for complainants who within fifteen days after the filing of such plan with the Court may file any objections they may have to any such plan. In the event that Complainants file any such objections to any such plans, the Court will schedule a hearing thereon within thirty days after the filing of the objections or as soon as reasonably practicable. Only after its approval by the Court shall the plan be put into effect.

(h) That, on July 1, 1979, and on July 1 of each year annually thereafter until equalization shall have been achieved in all eighty-two (82) counties, Defendants shall file with the Clerk of the Court, with a copy being simultaneously served upon counsel for Complainants, a copy to the Court which shall describe in full and in detail the progress being made in the implementation of this Decree and in the performance of the plan required by paragraph (g) above. There shall be attached to each such report the most recent recapitulation report filed by each of the eighty-two (82) counties pursuant to Section 37-35-111 and Paragraph (c) above. Copies of each such annual report shall, contemporaneous with the filing thereof, be delivered to

(1) counsel for Complainants;

(2) the office of the Governor;

(3) the Chairman of the Senate Finance Committee;

(4) the Chairman of the House, Ways and Means Committee;

(i) That the State Tax Commission members in their official capacities and their successors in office, from the funds available to the said State Tax Commission shall pay to Complainants $58,000.00 in attorneys' fees reasonably incurred, as a part of the costs, to be due and payable when this case is finally concluded;

(j) That this Decree shall, in accordance with prevailing law, inure to the benefit of, the class of persons represented by Complainants to the extent set forth herein, and shall be binding upon the Defendants, their successors in office, their agents, servants, employees and subordinates and all persons acting in concert with them;

(k) That the Court reserves the right to make supplemental findings of fact and/or conclusions of law as may hereafter be necessary or appropriate;

(l) That the Court expressly retains jurisdiction of each of these consolidated actions for entry of such further orders and decrees as may be necessary or appropriate to effectuate the provisions of this Decree, or to supplement or clarify its terms, and to assure that Defendants perform their duties in a constitutionally and legally permissible manner; provided, however, that after all counties in the state have achieved true equalization or after ten (10) years have passed following the entry of this Decree, whichever occurs sooner, the Court may, for cause shown, terminate jurisdiction if such is no longer necessary;

(m) That all taxable court costs and all costs of these proceedings shall be, and they hereby are, taxed to and assessed against Defendant State Tax Commission members

in their official capacities and their successors in office, from funds available to the State Tax Commission;

(n) That, with respect to the injunctive portions of this Decree, the Clerk of this Court shall be, and he hereby is, directed to issue a writ of injunction embodying the injunctive portions of this Decree, and to cause same to be served in the manner prescribed by law upon the following parties;

(1) The State Tax Commission of the State of Mississippi;

(2) Charles R. Brady, Jr., Chairman, State Tax Commission;

(3) E. Latrelle Ashley, Commissioner, State Tax Commission;

(4) Robert A. Baggett, Commissioner, State Tax Commission;

(5) Allen Bissell, Chief, Ad Valorem Division, State Tax Commission; and

(6) Guy Blankinship, Chief, Equalization Division, State Tax Commission.

ORDERED, ADJUDGED AND DECREED, this the 9th day of May, 1979.

/s/ James Arden Barnett
Chancellor

APPROVED AS TO FORM:

/s/ (Illegible)

Solicitor for Complainants

.....

Solicitor for Defendants

APPENDIX F

CONSTITUTIONAL PROVISIONS INVOLVED

(1) *The Supremacy Clause*: Constitution of the United States, Article VI, ¶2.

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

STATUTES INVOLVED

(1) *Tax Injunction Act of 1937*:

Title 28, U.S.C. §1341

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

(2) *Civil Rights Act of 1871*:

Title 42, U.S.C. §1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress ap-

plicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

(3) *Civil Rights Attorneys Fees Award Act of 1976*:

Title 42, U.S.C. §1988:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as a part of the costs."